

JASON D. RUSSELL (SBN 169219)
jason.russell@skadden.com
WINSTON P. HSIAO (SBN 273638)
winston.hsiao@skadden.com
SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP
300 South Grand Avenue
Los Angeles, California 90071-3144
Telephone: (213) 687-5000
Facsimile: (213) 687-5600

JAY B. KASNER (admitted *pro hac vice*)
ROBERT A. FUMERTON (admitted *pro hac vice*)
MICHAEL W. RESTEY (admitted *pro hac vice*)
Four Times Square
New York, New York 10036
Telephone: (212) 735-3000
Facsimile: (212) 735-2000

Attorneys for Defendants
El Pollo Loco Holdings, Inc., Trimaran
Capital Partners, Trimaran Pollo Partners,
L.L.C., Freeman Spogli & Co., Stephen J.
Sather, Laurance Roberts and Edward J.
Valle

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DANIEL TUROCY, et al., Individually
and on Behalf of All Others Similarly
Situating,

Plaintiffs,

vs.

EL POLLO LOCO HOLDINGS, INC.,
et al.,

Defendants.

Case No. 8:15-cv-01343-DOC-KES
(**Consolidated**)

DECLARATION OF JASON D.
RUSSELL IN SUPPORT OF
DEFENDANTS' MEMORANDUM OF
LAW IN OPPOSITION TO LEAD
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION

Date: May 14, 2018
Time: 8:30 a.m.
Judge: Hon. David O. Carter
Ct. No.: 9D

REDACTED VERSION
OF DOCUMENT
PROPOSED TO BE
FILED UNDER SEAL

DECLARATION OF JASON D. RUSSELL

1. I am an attorney admitted to practice before the courts of the State of California and have been admitted to this Court. I am a partner in the law firm of Skadden, Arps, Slate, Meagher & Flom LLP (“Skadden Arps”), counsel for Defendants El Pollo Loco Holdings, Inc. (“EPL” or the “Company”), Trimaran Capital Partners, Trimaran Pollo Partners, L.L.C., Freeman Spogli & Co., Stephen J. Sather, Laurance Roberts and Edward J. Valle (collectively, the “Defendants”). I submit this declaration in support of Defendants’ Memorandum of Law in Opposition to Lead Plaintiffs’ Motion for Class Certification. I make this declaration based on my own personal knowledge, and if called upon to do so, could and would testify competently thereto.

2. Attached as **Exhibit 1** is a true and correct copy of excerpts from the transcript of the deposition of Dr. Richard J. Levy taken January 15, 2018.

3. Attached as **Exhibit 2** is a true and correct copy of excerpts from the transcript of the deposition of Ron Huston taken January 26, 2018.

4. Attached as **Exhibit 3** is a true and correct copy excerpts from the transcript of the deposition of Professor Steven Feinstein taken February 2, 2018.

5. Attached as **Exhibit 4** is a true and correct copy of excerpts from the transcript of the deposition of Peter Kim taken February 13, 2018.

6. Attached as **Exhibit 5** is a true and correct copy of the Report of Daniel R. Fischel dated March 8, 2018.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on March 8, 2018 in Los Angeles, California

By: /s/ Jason D. Russell
Jason D. Russell

Exhibit 1

~~CONFIDENTIAL~~
CONFIDENTIAL

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION

4 DANIEL TUROCY, et al., Individually
5 and on Behalf of All Others Similarly
6 Situated,

Plaintiffs,

7 -against-

EL POLLO LOCO HOLDINGS, INC.,
8 et al.,

Defendants.

9 Case No. 8:15-cv-01343-DOC-KES
10 -----

11
12 January 25, 2018

9:09 a.m.

13
14 CONFIDENTIAL
15

16 VIDEOTAPED DEPOSITION of DR.RICHARD J.
17 LEVY, taken by Defendants, pursuant to
18 Notice, held at the offices of SKADDEN,
19 ARPS, SLATE, MEAGHER & FLOM, LLP, Four
20 Times Square, New York, New York before
21 Wayne Hock, a Notary Public of the
22 State of New York.
23

24 JOB No. 2783112

25 PAGES 1 - 221

Page 1

~~CONFIDENTIAL~~

A P P E A R A N C E S:

ROBBINS GELLER RUDMAN & DOWD LLP

Attorneys for Plaintiffs

655 West Broadway

San Diego, California 92101

BY: RYAN LLORENS, ESQ.

ryanl@rgrd.com

KEVIN A. LAVELLE, ESQ.

klavelle@rgrd.com

SKADDEN, ARPS, SLATE, MEAGHER &

FLOM, LLP

Attorneys for Defendants

Four Times Square

New York, New York 10036

BY: ROBERT A. FUMERTON, ESQ.

robert.fumerton@skadden.com

MICHAEL W. RESTEY, JR., ESQ.

michael.restey@skadden.com

ALSO PRESENT:

TOM DEVINE, Videographer

ERIC RIEDEL

~~CONFIDENTIAL~~

1	THE VIDEOGRAPHER: Good	09:08:39
2	morning. We are going on the	09:08:39
3	record at 9:09 a.m. on January 25,	09:08:44
4	2018.	09:08:48
5	Please note that the	09:08:49
6	microphones are sensitive and may	09:08:51
7	pick up whispering, private	09:08:54
8	conversations, and cellular	09:08:55
9	interference.	09:08:58
10	Please turn off all cell	09:08:58
11	phones or place them away from the	09:09:01
12	microphones as they can interfere	09:09:02
13	with the deposition audio.	09:09:04
14	Audio and video recording	09:09:05
15	will continue to take place unless	09:09:06
16	all parties agree to go off the	09:09:09
17	record.	09:09:11
18	This is media unit one of the	09:09:11
19	video recorded deposition of	09:09:11
20	Richard J. Levy in the matter of	09:09:13
21	Daniel Turocy V. El Pollo Loco	09:09:14
22	Holdings, Inc. filed in the U.S.	09:09:18
23	District Court, the Central	09:09:21
24	District of California, case number	09:09:24
25	8:15-CV-01343-DOC-KES.	09:09:25

Page 5

~~CONFIDENTIAL~~

1 This deposition is being held 09:09:34
2 at the offices of Skadden, Arps, 09:09:36
3 Slate, Meagher and Flom, LLP 09:09:40
4 located at 4 Times Square, New 09:09:41
5 York, New York 10036. 09:09:44

6 My name is Thomas Devine from 09:09:46
7 the firm Veritext California and 09:09:49
8 I'm the videographer. The court 09:09:52
9 reporter is Wayne Hock also from 09:09:54
10 Veritext California. 09:09:56

11 I am not authorized to 09:09:58
12 administer an oath, I am not 09:10:01
13 related to any party in this 09:10:01
14 action, nor am I financially 09:10:02
15 interested in the outcome. 09:10:03

16 Counsel and all present in 09:10:05
17 the room will now state their 09:10:07
18 appearances and affiliations for 09:10:09
19 the record. If there are any 09:10:10
20 objections to the proceedings, 09:10:10
21 please state them at the time of 09:10:10
22 your appearance beginning with the 09:10:12
23 noticing attorney. 09:10:13

24 MR. FUMERTON: Robert 09:10:16
25 Fumerton, Mike Restey, Eric Riedel, 09:10:18

Page 6

~~CONFIDENTIAL~~

1 Skadden Arps, on behalf of the 09:10:22
2 defendants. 09:10:24
3 MR. LLORENS: Ryan Llorens, 09:10:24
4 Kevin Lavelle, Robbins Geller on 09:10:26
5 behalf of the witness. 09:10:28
6 THE VIDEOGRAPHER: Thank you. 09:10:30
7 Wayne, would you please swear 09:10:30
8 in the witness. 09:10:32
9 R I C H A R D J. L E V Y, having 09:10:41
10 been first duly sworn by a 09:10:41
11 Notary Public of the State of 09:10:41
12 New York, upon being examined, 09:10:41
13 testified as follows: 09:10:41
14 EXAMINATION BY 09:10:41
15 MR. FUMERTON: 09:10:42
16 Q. Good morning, Dr. Levy. 09:10:42
17 A. Good morning. 09:10:45
18 Q. Please state your name and 09:10:46
19 address for the record. 09:10:48
20 A. Sure. 09:10:49
21 Richard J. Levy, M.D., [REDACTED] 09:10:52
22 [REDACTED] New 09:10:52
23 York, New York 10069. 09:10:54
24 Q. Now, Dr. Levy, you understand 09:10:56
25 you've sued a number of defendants in 09:10:58

Page 7

~~CONFIDENTIAL~~

1 deposition take place in the Central 09:27:07
2 District of California where you filed 09:27:10
3 suit? 09:27:11
4 A. I do not know that. 09:27:11
5 Q. Counsel never made you aware 09:27:12
6 of that request? 09:27:19
7 A. No, sir. 09:27:19
8 MR. LLORENS: Objection. It 09:27:20
9 misstates the facts. 09:27:25
10 Q. Would it have been 09:27:27
11 inconvenient for you to travel to 09:27:31
12 California to take this deposition? 09:27:32
13 A. I have a pretty busy 09:27:34
14 schedule. With adequate lead time and 09:27:42
15 with coordination with my attorneys, I 09:27:44
16 can certainly be available, but it has 09:27:49
17 to be with adequate lead time and with 09:27:52
18 coordination with them. 09:27:55
19 Q. And is it fair to say that 09:27:56
20 your availability to travel to -- 09:27:57
21 MR. FUMERTON: Strike that. 09:27:59
22 Q. Is it fair to say with all of 09:28:00
23 your work responsibilities your ability 09:28:03
24 to travel to California is limited? 09:28:04
25 A. I wouldn't use that 09:28:06

Page 28

~~CONFIDENTIAL~~

1 terminology. I would say it is -- my 09:28:07
2 schedule and schedule changes are 09:28:13
3 feasible but I'm sure, as with you, it 09:28:15
4 requires coordination of scheduling 09:28:20
5 with enough lead time. 09:28:22

6 Q. What would adequate lead time 09:28:23
7 be to schedule a deposition in 09:28:27
8 California? 09:28:28

9 A. Especially with this time of 09:28:29
10 year with the academic meetings, the 09:28:31
11 national meetings I go to in addition 09:28:34
12 to my clinical responsibilities, it 09:28:36
13 could take up to six months to actually 09:28:38
14 schedule a proper amount of time to 09:28:40
15 travel to the west coast. 09:28:43

16 Q. Dr. Levy, can you generally 09:28:54
17 describe your educational background 09:28:58
18 starting with any secondary education? 09:29:00

19 A. Sure. 09:29:03

20 I went to undergraduate 09:29:04
21 school in SUNY Binghamton, achieved a 09:29:06
22 BS in biology and a minor in biological 09:29:10
23 anthropology and then went and 09:29:10
24 completed my medical degree at New York 09:29:16
25 Medical College in Valhalla. And then 09:29:19

Page 29

~~CONFIDENTIAL~~

1 I subsequently trained in pediatrics 09:29:22
2 and Board certified in pediatrics at 09:29:22
3 the Children's Hospital of 09:29:24
4 Philadelphia; anesthesiology, 09:29:26
5 anesthesia residency at the University 09:29:28
6 of Pennsylvania, Board certified in 09:29:30
7 that. I then completed a pediatric 09:29:31
8 critical care medicine fellowship, 09:29:35
9 Board certified in that, at the 09:29:36
10 Children's Hospital of Philadelphia. 09:29:37
11 I then subsequently completed 09:29:39
12 pediatric critical care fellowships, 09:29:41
13 pediatric anesthesia fellowships, a T32 09:29:43
14 research fellowship funded by the NIH 09:29:46
15 at UPENN in Children's Hospital of 09:29:49
16 Philadelphia. And I'm Board certified 09:29:51
17 in pediatric anesthesiology as well. 09:29:52
18 Q. Where are you currently 09:29:58
19 employed? 09:29:59
20 A. I'm currently at Columbia 09:30:00
21 University Medical Center New York 09:30:00
22 Presbyterian Hospital System in New 09:30:01
23 York. 09:30:04
24 Q. So you teach at Columbia 09:30:04
25 Medical Center? 09:30:09

Page 30

~~CONFIDENTIAL~~

1 terms of percentage of time and it can 09:31:09
2 be anywhere between twenty to fifty 09:31:12
3 percent depending upon the day 09:31:14
4 depending upon the week. 09:31:16

5 I also run an NIH-funded 09:31:17
6 basic science laboratory which I spend 09:31:20
7 about seventy percent of my time doing 09:31:23
8 research and there is teaching that is 09:31:25
9 involved in that as well with residents 09:31:27
10 and fellows. 09:31:30

11 Q. And then what percentage of 09:31:33
12 your time would you say you're actually 09:31:36
13 practicing medicine as opposed to 09:31:38
14 teaching to the extent you can divide 09:31:39
15 those up? 09:31:42

16 A. I'm assuming you're asking 09:31:43
17 about caring for patients directly? 09:31:45

18 Q. Correct. 09:31:47

19 A. So currently it is about 09:31:48
20 twenty percent of my time is actually 09:31:49
21 caring for patients directly. 09:31:52

22 Q. So twenty percent caring for 09:31:58
23 patients directly; is that correct? 09:32:00

24 A. That's correct. 09:32:03

25 Q. Twenty to fifty percent of 09:32:03

Page 32

~~CONFIDENTIAL~~

1 your teaching activities which include 09:32:07
2 the clinical activities you've 09:32:09
3 described? 09:32:12
4 A. Correct. 09:32:12
5 Q. And then what constitutes the 09:32:13
6 remainder? 09:32:17
7 A. So the remainder actually 09:32:18
8 would be under the umbrella of research 09:32:21
9 and what research entails is not only 09:32:24
10 doing experiments at the bench -- we 09:32:26
11 work with mice and mouse pups -- but 09:32:30
12 it's also writing, reading literature, 09:32:32
13 scientific writing of abstracts, 09:32:36
14 manuscripts, grants which can take an 09:32:38
15 exorbitant amount of time. In reality, 09:32:41
16 it is a 24/7 proposition to write when 09:32:45
17 you're doing basic science research. 09:32:48
18 And so I'm doing that pretty much every 09:32:51
19 day. But on paper, that's probably 09:32:53
20 about seventy-five percent of my time. 09:32:57
21 So the teaching is throughout and 09:32:59
22 incorporated. 09:33:01
23 Q. So you've given us a rough 09:33:04
24 breakdown of your time. 09:33:07
25 How much time -- 09:33:08

Page 33

~~CONFIDENTIAL~~

1 MR. FUMERTON: Strike that. 09:33:09

2 Q. You've given us a rough 09:33:09

3 breakdown of how you spend your time. 09:33:13

4 How many hours a week do you 09:33:14

5 typically work on all of these 09:33:17

6 different activities? 09:33:19

7 A. It's quite variable. When 09:33:19

8 I'm in the operating room even though 09:33:21

9 that's on paper twenty percent, the day 09:33:24

10 starts about 7:00 in the morning and 09:33:27

11 can end the next day. If I'm on call 09:33:29

12 doing a heart transplant, for example, 09:33:33

13 I've had times where I've worked 09:33:35

14 twenty-four hours straight and that's 09:33:37

15 considered twenty percent of that week. 09:33:39

16 There are other times where the day 09:33:41

17 ends at 7:00 or 8:00 at night in the 09:33:43

18 operating room. So it's quite 09:33:45

19 variable. It depends on the workload 09:33:48

20 and the cases that are -- that come in 09:33:49

21 in addition to my call 09:33:53

22 responsibilities. 09:33:54

23 The other days are a little 09:33:55

24 bit more predictable and manageable. 09:33:57

25 In the lab and in my office hours where 09:34:01

Page 34

~~CONFIDENTIAL~~

1 I'm doing writing and scientific 09:34:03
2 reading, usually the day starts around 09:34:07
3 8:30, 9:00 in the morning and I usually 09:34:14
4 finish around 4:00 or 5:00 but then 09:34:14
5 continue to do some work at night at 09:34:17
6 home, so it's quite variable and it's a 09:34:18
7 day-to-day. 09:34:21

8 Q. If you had to estimate an 09:34:22
9 average number of hours you work during 09:34:24
10 the week, what would you say? 09:34:26

11 A. I couldn't give you an actual 09:34:27
12 number because, as I said, when you're 09:34:30
13 doing research, it is a constant -- 09:34:32
14 it's constant work. 09:34:35

15 Q. Sure. 09:34:37

16 And I'm not asking for a 09:34:38
17 specific type of work. 09:34:39

18 All of these activities that 09:34:40
19 you do, if you had to estimate a range 09:34:42
20 of hours per week on average -- 09:34:45
21 obviously some weeks will be more, some 09:34:48
22 weeks will be less -- what would you 09:34:50
23 estimate? 09:34:53

24 A. On paper they will tell you 09:34:54
25 it's a forty-hour workweek but I can 09:34:56

Page 35

~~CONFIDENTIAL~~

1 tell you it's not, so it's going to be 09:35:00
2 more than that. And I couldn't give 09:35:02
3 you an actual number because the only 09:35:03
4 thing that I could really clock in and 09:35:05
5 clock out the times that I worked is in 09:35:09
6 the operating room. 09:35:12

7 Q. Over fifty hours would you 09:35:12
8 estimate? 09:35:12

9 A. Much more than that. 09:35:14

10 Q. Over sixty hours? 09:35:14

11 A. It's more. Because when I'm 09:35:15
12 at home reviewing the literature and 09:35:17
13 writing an abstract, that's work. It's 09:35:19
14 not digging a hole for fixing the roads 09:35:22
15 but it's work, and so it's hard to 09:35:27
16 quantify. It varies day to day, week 09:35:32
17 to week. And weekends are included. 09:35:34

18 Q. But it's fair to say your 09:35:36
19 schedule's very unpredictable; is that 09:35:38
20 correct? 09:35:42

21 A. Absolutely. 09:35:42

22 Q. And who sets your schedule? 09:35:44
23 Who determines the times when you're 09:35:46
24 going to be in clinic teaching 09:35:48
25 residents versus times you're going to 09:35:51

Page 36

1 be operating versus the times you're 09:35:53
2 doing research, et cetera? 09:35:55
3 A. It's coordinated with our 09:35:56
4 division head of clinical operations. 09:36:00
5 So we like it to be as predictable as 09:36:04
6 possible. So my usual operating room 09:36:07
7 day is Monday and then the call 09:36:11
8 coincides with that so that the 09:36:14
9 remainder of the week I can then 09:36:15
10 coordinate my own schedule with regard 09:36:18
11 to experiments and lectures and writing 09:36:20
12 and reading. 09:36:23
13 Q. But the operating schedule on 09:36:23
14 Monday is set by the head of the 09:36:27
15 clinic? 09:36:29
16 A. Yeah, we've pretty much 09:36:29
17 agreed, when I came on staff, that 09:36:31
18 Mondays would be my day and we would 09:36:34
19 coincide the call with that so I would 09:36:37
20 take a full call commitment as with 09:36:40
21 every other member of the division. 09:36:43
22 And so basically that's why my days are 09:36:44
23 fairly long on Mondays and fairly 09:36:47
24 variable depending upon the load of 09:36:50
25 actual cases. 09:36:52

Page 37

~~CONFIDENTIAL~~

1 Q. In terms of your lectures, 09:36:53
2 these are like formal classroom-type 09:36:56
3 lectures? 09:36:59

4 A. The classroom is something 09:36:59
5 like this, some are bigger. I also 09:37:01
6 give visiting professor grand rounds at 09:37:04
7 various institutions around the country 09:37:08
8 and those are in grand rounds-type 09:37:10
9 environments with the entire department 09:37:13
10 in an amphitheater-type setting or a 09:37:14
11 conference room. So that is variable 09:37:18
12 as well. And then the teaching at the 09:37:20
13 bedside is obviously teaching in the 09:37:23
14 operating room while you're caring for 09:37:24
15 patients directly at the bedside. 09:37:28

16 Q. But the scheduling of the 09:37:30
17 lectures, who sets the schedule for the 09:37:32
18 lectures? 09:37:34

19 A. Again, those are variable. 09:37:34
20 It depends on the venue. If it's an 09:37:36
21 invited lecture, for example I'm going 09:37:36
22 to the University of Pittsburgh in 09:37:38
23 April to give an invited visiting 09:37:40
24 professor lectureship, that's set by 09:37:42
25 that department and those folks. 09:37:47

Page 38

~~CONFIDENTIAL~~

1 Within our own division, we have a 09:37:48
2 schedule where we have a number of 09:37:51
3 responsibilities for formal didactic to 09:37:54
4 fellows and residents. And we are 09:37:58
5 either assigned or volunteered to give 09:38:00
6 various lectures and those are set by 09:38:04
7 the folks who schedule those lectures 09:38:06
8 throughout the year. 09:38:08

9 There's also medical student 09:38:10
10 lectures which is incorporated into the 09:38:12
11 medical student curriculum and that's 09:38:14
12 set by somebody else. So these are 09:38:15
13 coordinated with the folks who set up 09:38:18
14 the curriculum for the various lectures 09:38:20
15 that are incorporated into them. 09:38:24

16 Q. So Dr. Levy, you're obviously 09:38:51
17 an extremely busy person, but I want to 09:38:54
18 turn to your investing in general. 09:38:58

19 How often would you say that 09:39:00
20 you invest? 09:39:02

21 A. Can you be more specific? 09:39:03

22 Q. Just generally speaking, how 09:39:07
23 much time do you spend dealing with 09:39:10
24 your investments? 09:39:13

25 MR. LLORENS: Objection. 09:39:16

Page 39

CONFIDENTIAL

1 CERTIFICATION BY REPORTER

2
3 I, Wayne Hock, a Notary Public of the
4 State of New York, do hereby certify:

5 That the testimony in the within
6 proceeding was held before me at the
7 aforesaid time and place;

8 That said witness was duly sworn
9 before the commencement of the testimony,
10 and that the testimony was taken
11 stenographically by me, then transcribed
12 under my supervision, and that the within
13 transcript is a true record of the
14 testimony of said witness.

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage, that I am not
18 interested directly or indirectly in the
19 matter in controversy, nor am I in the
20 employ of any of the counsel.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 30th day of January,
23 2018.

24 

25 Wayne Hock

Page 221

Exhibit 2

REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DANIEL TUROCY, et al.,)
Individually and on Behalf of)
All Others Similarly)
Situating,)

Plaintiffs,) No. 8:15-cv-01343-DOC-KES

vs.)

EL POLLO LOCO HOLDINGS, INC.,)
et al.,)

Defendants.)
_____)

** CONFIDENTIAL **
** PURSUANT TO PROTECTIVE ORDER **
VIDEOTAPED DEPOSITION OF RON D. HUSTON
Los Angeles, California
Friday, January 26, 2018
Volume I

Reported by:
NADIA NEWHART
CSR No. 8714
Job No. 2783118
PAGES 1 - 159

Page 1

1 APPEARANCES:

2
3 For Plaintiffs:

4 THE ROSEN LAW FIRM, P.A.

5 BY: PHILLIP KIM

6 Attorney at Law

7 275 Madison Avenue, 34th Floor

8 New York, New York 10016

9 212-686-1060

10 pkim@rosenlegal.com

11
12 For Defendants El Pollo Loco Holdings, Inc.,
13 Trimaran Capital Partners, Trimaran Pollo Partners,
14 L.L.C., Freeman Spogli & Co., Stephen J.
15 Sather, Laurance Roberts and Edward J. Valle:

16 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

17 BY: ROBERT A. FUMERTON

18 BY: MICHAEL W. RESTEY, JR.

19 Attorneys at Law

20 Four Times Square

21 New York, New York 10036

22 212-735-3000

23 robert.fumerton@skadden.com

24 michael.restey@skadden.com

25
Page 3

1 APPEARANCES (Continued):

2
3 Videographer:

4 STEVEN TOGAMI
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Page 4

1 Los Angeles, California, Friday, January 26, 2018

2 9:14 a.m.

3

4 THE VIDEOGRAPHER: Good morning. We are on

5 the record at 9:14 a.m. on January 26th, 2018. 09:14:45

6 Please note that the microphones are

7 sensitive and may pick up whispers, private

8 conversations and cellular interference. Audio and

9 video recording will continue to take place unless

10 all parties agree to go off the record. 09:15:05

11 This is Media Unit Number 1 of the

12 video-recorded deposition of Ron Huston taken by

13 counsel for the defendants in the matter of Daniel

14 Turocy, et al. versus El Pollo Loco Holdings, Inc.,

15 et al., filed in the United States District Court, 09:15:31

16 Central District of California, Southern Division,

17 case number 8:15-cv-01343-DOC-KES.

18 This deposition is being held at Skadden Arps

19 located at 300 South Grand Avenue, Los Angeles,

20 California, 90071. 09:16:01

21 My name is Steven Togami from the firm

22 Veritext Legal Solutions, and I am the videographer.

23 The court reporter is Nadia Newhart from the firm

24 Veritext Legal Solutions.

25 I am not related to any party in this action, 09:16:19

Page 10

1 nor am I financially interested in the outcome. If
2 there are any objections to proceeding, please state
3 them at the time of your appearance.

4 At this time, will counsel and all present
5 please state their appearances and affiliations for 09:16:35
6 the record.

7 MR. FUMERTON: Robert Fumerton, Michael
8 Restey, Skadden Arps for defendants.

9 MR. KIM: Phil Kim, Rosen Law Firm for the
10 plaintiff, Mr. Huston. 09:16:51

11 THE WITNESS: Ron Huston.

12 THE VIDEOGRAPHER: Thank you. Could we
13 please have the oath.

14
15 RON D. HUSTON,
16 having been first duly sworn, was examined and
17 testified as follows:

18
19
20
21 EXAMINATION

22 BY MR. FUMERTON:

23 Q Good morning, Mr. Huston.

24 A Good morning.

25 Q Please state your full name and address for 09:17:09

Page 11

1 the record.

2 A Ron Huston, [REDACTED], Denver,
3 Colorado, 80218.

4 Q Now, Mr. Huston, you understand you've sued a
5 number of different defendants in this action; is 09:17:22
6 that correct?

7 A Yes.

8 Q And if I refer to them as defendants
9 throughout the deposition, you'll understand what I
10 mean? 09:17:28

11 A I will.

12 Q If I refer to El Pollo Loco Holdings, Inc. as
13 EPL, will you also understand what I mean?

14 A You might want to explain that one to me.

15 Q If I just refer to El Pollo Loco as EPL -- 09:17:41

16 A I don't know what EPL is.

17 Q EPL is an abbreviation for El Pollo Loco.

18 A Ah, okay. Okay. Got you.

19 Q You'll understand if I use the term "EPL" --

20 A That's what you mean. 09:17:50

21 Q -- I'm referring to El Pollo Loco Holdings.

22 A Thank you. Got it.

23 Q Mr. Huston, have you ever been deposed
24 before?

25 A One time. 09:17:58

Page 12

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Q If you go up a few rows, you made a purchase
on -- you made two purchases on May 15th, 2015.

Do you see that?

A Yes.

11:08:04

Q The first purchase on May 15th was 4,000
shares at \$25 per share.

Do you see that?

A I do.

Q And then 6,000 shares at \$24.88 per share.

11:08:18

Do you see that?

A I do.

Q And do you recall any reason that you
purchased those shares on that date other than what
you've testified about?

11:08:34

Page 93

1 A No. This -- this was strictly a price
2 awareness. There was a big price drop, and I
3 thought a good company just went on sale.

4 Q Do you recall why you made two separate
5 purchases on that day? 11:08:45

6 A I may have in- -- I may have input a couple
7 of limit order -- different limits just in case, you
8 know, there was a temporary dip, and it went back
9 up. So I probably had two limits in there.

10 Q And by limit orders, do you mean when it fell 11:09:03
11 to a certain price --

12 A Yeah.

13 Q -- you would -- you would buy?

14 A Correct.

15 Q Would you often do that in trading in EPL 11:09:10
16 securities?

17 A I don't --

18 MR. KIM: Objection to form.

19 THE WITNESS: I don't know how to define
20 often, but it was a way I did it when I was trying 11:09:25
21 to dollar cost average into something, that I would
22 put in a lower level and if they hit it, it
23 triggered. So probably yes.

24 BY MR. FUMERTON:

25 Q And would you typically put your limit orders 11:09:37

Page 94

1 as whole dollar amounts, like \$25?

2

[REDACTED]

Page 95

[REDACTED]

[REDACTED]

[REDACTED]

■

■

■

■

11:13:23

Page 97

1 Do I think it was inflated or underinflated?
2 Relative to my time in it, I thought it's another
3 chance to dollar cost into a -- a company that I --
4 that I think had good prospects.

5 Q And sitting here today, do you think that the 11:21:52
6 stock price of EPL on August 14th, 2015 was
7 artificially inflated?

8 MR. KIM: Objection to form --

9 BY MR. FUMERTON:

10 Q You can answer. 11:22:05

11 MR. KIM: -- to the extent it calls for a
12 legal conclusion.

13 THE WITNESS: In hindsight -- in hindsight, I
14 mean, I don't know. It looks like it -- it could
15 have been. 11:22:32

16 BY MR. FUMERTON:

17 Q Do you think the stock price of EPL was
18 artificially inflated at any time over the course of
19 your trades in EPL?

20 MR. KIM: Objection to form to the extent it 11:22:44
21 calls for a legal conclusion.

22 THE WITNESS: Could you re -- maybe
23 rephrase --

24 MR. FUMERTON: Sure.

25 THE WITNESS: -- or clarify? 11:22:52

Page 106

1 Maybe -- "inflated" maybe is not the right
2 word.

3 BY MR. FUMERTON:

4 Q Well, I'll ask a better question.

5 A Okay. 11:22:57

6 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 11:23:06

11 Q At any point in time in that time period, did
12 you think that the price of EPL stock was
13 artificially inflated, sitting here today?

14 MR. KIM: Objection to form to the extent it
15 calls for a legal conclusion. 11:23:17

16 THE WITNESS: I'm trying to think of what I
17 thought back then, but it -- it must have been
18 because I decided to -- to leave it at some point.

19 BY MR. FUMERTON:

20 Q Right. And so to be clear, sitting here 11:23:35
21 today, do you think the price of EPL stock was
22 artificially inflated at any point between
23 March 27th, 2015 and August 24th, 2015?

24 MR. KIM: Same objection as before; form,
25 legal conclusion. 11:23:54

Page 107

1 BY MR. FUMERTON:

2 Q You can answer.

3 A Okay. By artificial, meaning it was --

4 Q What's your understanding of the term

5 "artificial inflation"?

11:24:06

6 A Yeah, that it's artificially high, meaning if

7 something would have been known that would have

8 caused it to be lower; is that what you mean?

9 Q Use that -- use that definition. That's

10 fine.

11:24:17

11 A It would be artificially high if there was

12 information that whoever establishes pricing, the

13 market.

14 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Page 108

1

██████████

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were administered an oath; that
8 a record of the proceedings was made by me using
9 machine shorthand which was thereafter transcribed
10 under my direction; that the foregoing transcript is
11 a true record of the testimony given.

12 Further, that if the foregoing pertains to the
13 original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify that I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or any party to this action.

19 IN WITNESS WHEREOF, I have this date subscribed
20 my name.

21 Dated: 2/9/2018

22 
23

24 NADIA NEWHART

25 CSR NO. 8714

Page 159

Exhibit 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DANIEL TUROCY, et al.,)
individually and on behalf)
of all others similarly)
situated,)
Plaintiffs,)
vs.) Case No.
EL POLLO LOCO HOLDINGS,) 8:15-cv-01343-DOC-KES
INC., et al.,) (Consolidated)
Defendants.)

Videotaped deposition of STEVEN P.
FEINSTEIN, Ph.D., CFA, Volume I, taken on behalf of
Defendants, at 300 South Grand Avenue, Suite 3200,
Los Angeles, California, beginning at 9:09 A.M. and
ending at 3:19 P.M. on Friday, February 9, 2018,
before LORI SCINTA, RPR, Certified Shorthand
Reporter No. 4811.

1 APPEARANCES:

2
3 For Plaintiffs:

4 ROBBINS GELLER RUDMAN & DOWD LLP

5 BY: RYAN A. LLORENS

6 Attorney at Law

7 655 West Broadway

8 Suite 1900

9 San Diego, California 92101

10 619.231.1058

11 Email: rllorens@rgrdlaw.com

12 -- and --

13 THE ROSEN LAW FIRM

14 BY: JOSH BAKER

15 Attorney at Law

16 275 Madison Avenue

17 34th Floor

18 New York, New York 10016

19 212.686.1060

20 Email: jbak@rosenlegal.com

21
22
23
24
25
Page 3

1 APPEARANCES (Continued):

2

3 For Defendants:

4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

5 BY: ROBERT A. FUMERTON

6 MICHAEL POWELL

7 Attorneys at Law

8 Four Times Square

9 New York, New York 10036

10 212.735.3902

11 Email: robert.fumerton@skadden.com

12

13 Videographer:

14 DAVID WEST

15

16

17

18

19

20

21

22

23

24

25

Page 4

1 Los Angeles, California, Friday, February 9, 2018

2 9:09 A.M.

3

4 THE VIDEOGRAPHER: Good morning. We are
5 now on the record. The time is 9:09 A.M. The date 09:09:41
6 today, February 9th, 2018.

7 Please note that the microphones are
8 sensitive and may pick up whispers, private
9 conversations and cellular interference. Please
10 turn off all cellphones or place them away from the 09:09:57
11 microphones as they can interfere with the
12 deposition audio. Audio and video recording will
13 continue to take place unless all parties agree to
14 go off the record.

15 This is Media Unit 1 of the video-recorded 09:10:10
16 deposition of Steven P. Feinstein, Ph.D., CFA, taken
17 by counsel for defendant in the matter of Daniel
18 Turosy, et al. versus El Pollo Loco Holdings, Inc.,
19 et al., filed in the United States District Court,
20 Central District of California, Southern Division, 09:10:29
21 case No. 8:15-cv-01343-DOC-KES.

22 The deposition is being held at 300 South
23 Grand Avenue, Los Angeles, California.

24 My name is David West. I am from Veritext.
25 I am the videographer. The court reporter is 09:10:49

Page 9

~~CONFIDENTIAL~~

1 Lori Scinta. She is also from Veritext.

2 I am not authorized to administer an oath,
3 I am not related to any party in this action, nor am
4 I financially interested in the outcome.

5 Counsel and all present in the room will 09:11:02
6 now state their appearances and affiliations for the
7 record.

8 If there are any objections to proceeding,
9 please state them at the time of your appearance,
10 beginning with the noticing attorney. 09:11:12

11 MR. FUMERTON: Robert Fumerton, Michael
12 Powell, from Skadden Arps for defendants.

13 MR. LLORENS: Ryan Llorens from Robbins
14 Geller for plaintiffs.

15 THE VIDEOGRAPHER: Thank you. 09:11:22

16 The court reporter may now swear in the
17 witness and we will proceed.

18
19 STEVEN P. FEINSTEIN, Ph.D., CFA,
20 having been administered an oath, was examined and
21 testified as follows:

22
23 EXAMINATION

24 BY MR. FUMERTON:

25 Q Good morning, Dr. Feinstein. 09:11:36

Page 10

~~CONFIDENTIAL~~

1 Project and Report," is that where you set forth the
2 scope of your engagement in this action?

3 A Well, it's Paragraphs 1 and 2.

4 Q And in Paragraph 1, you describe the first
5 part of your analysis which was determining whether 09:17:46
6 common stock of El Pollo Loco and options traded in
7 an efficient market; is that correct?

8 A Yes.

9 Q And then in Paragraph 2, you state, quote:

10 "In addition, I have been asked to 09:17:59
11 opine on whether damages in this
12 matter can be computed using a common
13 methodology for all class members in
14 connection with their claims under
15 Section 10(b) of the Exchange Act of 09:18:09
16 1934 and U.S. Securities & Exchange
17 Commission Rule 10b-5 adopted
18 thereunder."

19 Do you see that?

20 A Yes. 09:18:18

21 Q Is it your testimony, though, that your
22 scope of your engagement also included damages under
23 Section 20A?

24 A Ultimately, yes.

25 MR. LLORENS: Objection. Misstates the 09:18:27

Page 16

1 testimony.

2 BY MR. FUMERTON:

3 Q You state "Ultimately, yes."

4 What do you mean by "ultimately"?

5 A Not at the time that I finalized the report 09:18:32
6 but subsequent I was asked whether what I said in
7 the report would also cover 20A; and the answer is
8 yes, it would.

9 Q And who asked you that question?

10 A Mr. Llorens. 09:18:43

11 Q You plan on submitting an additional report
12 with that opinion?

13 A If asked.

14 Q Has Mr. Llorens asked you to submit an
15 additional report with that opinion? 09:18:52

16 A No.

17 Q Do you anticipate testifying at an
18 evidentiary hearing for class certification if
19 asked?

20 A If asked, yes. 09:19:13

21 Q And during that hearing would you opine on
22 whether Section 20A damages can be computed on a
23 class-wide basis?

24 A If any of the parties ask me to, I would
25 answer the question. Sure. 09:19:25

Page 17

~~CONFIDENTIAL~~

1 Q But do you have an opinion as -- one way or
2 the other -- strike that.

3 I know it's not in your report, but do you
4 have an opinion one way or the other as to whether
5 the alleged misstatements on May 14th impacted the 12:02:16
6 stock price reaction on May 15th?

7 A No --

8 MR. LLORENS: Objection.

9 THE WITNESS: Oh, sorry.

10 MR. LLORENS: Beyond the scope of his 12:02:26
11 report --

12 THE WITNESS: No, because --

13 MR. LLORENS: -- and this deposition.

14 THE WITNESS: -- this is a market
15 efficiency report, and it's not a price impact, loss 12:02:30
16 causation, or damages report. Analysis for those I
17 haven't yet conducted.

18 BY MR. FUMERTON:

19 Q What other information was conveyed to the
20 market on May 14th other than the alleged 12:02:43
21 misstatements that could have impacted the stock
22 price, if you know?

23 A No. I do know. It's in the report.

24 I'm just thinking how to characterize it.

25 But rather than formulate new words, I should just 12:02:57

Page 125

~~CONFIDENTIAL~~

1 these questions were leading back to the initial --

2 MR. FUMERTON: Counsel --

3 MR. LLORENS: -- question of what he would
4 do if he was --

5 MR. FUMERTON: -- let's stick to making 12:16:58
6 objections. And if the witness is un- -- has any
7 question about the questions, he can answer [sic].

8 MR. LLORENS: Okay.

9 BY MR. FUMERTON:

10 Q Did you under -- in this case, did you 12:17:11
11 undertake any independent analysis of the resulting
12 analysts reports in August 2015 that followed the
13 August 13th earnings calls?

14 A Yes.

15 Q In conducting that analysis, did you 12:17:26
16 determine whether the market was interpreting any
17 new information concerning the alleged
18 misstatements?

19 A Yes.

20 Q And what was your conclusion? 12:17:41

21 A The analyst reports do reflect that the
22 market was apprised of new negative information
23 in -- as of the date of those reports after -- well,
24 new information that was provided to the marketplace
25 on August 14th, 2015. 12:17:59

Page 138

~~CONFIDENTIAL~~

1 Q And did that new negative information
2 reveal the truth of any of the alleged
3 misstatements?

4 MR. LLORENS: Objection. Outside the scope
5 of his market efficiency report and this deposition. 12:18:09

6 THE WITNESS: That conclusion I did not
7 draw. It was not part of the scope. It wasn't
8 necessary for assessing market efficiency.
9 Everything up to that was integral to assessing
10 market efficiency or necessary for assessing -- 12:18:23

11 BY MR. FUMERTON:

12 Q Do you have any view --

13 A -- market efficiency.

14 (Reporter clarification.)

15 Q Do you have any view one way or the other 12:18:30
16 as to whether any of the negative information
17 revealed the truth of any of the alleged
18 misstatements?

19 MR. LLORENS: Objection.

20 THE REPORTER: I'm sorry. Hold on. 12:19:07

21 (Reporter clarification.)

22 THE WITNESS: I haven't formed an opinion
23 about that. What I did form an opinion about
24 that -- or a finding -- what I found in my analysis,
25 which was a step in assessing market efficiency, was 12:19:23

Page 139

1 that there was new negative information provided to
2 the marketplace that hadn't been provided earlier,
3 whether it -- whether it constitutes a corrective
4 disclosure or proves price impact is -- are
5 conclusions I did not need to draw and therefore did 12:19:50
6 not draw in assessing market efficiency in doing --
7 and in doing the analysis.

8 (Exhibit 37 was marked for
9 identification by the court reporter
10 and is attached hereto.) 12:20:22

11 MR. FUMERTON: Marking as Exhibit 37 a
12 William Blair analyst report on El Pollo Loco
13 Holdings, Inc., dated August 13, 2015.

14 Q Do you recognize this document?

15 A Yes. 12:20:49

16 Q And, in fact, you excerpt this document in
17 Paragraph 126 of your report, correct?

18 A Yes.

19 Q In the second bullet, the second sentence
20 of this report states, quote: 12:21:17

21 "Trends softened as the quarter
22 progressed, with expected weakness in
23 May (overlapping high-ticket LTOS of
24 both shrimp and carne asada that
25 obscured" EPL's "value message) 12:21:31

Page 140

1 softening that's not fully explained by the expected
2 weakness in May and the explanation for May that's
3 offered.

4 Q Let's start with May 15th.

5 Is the May 15th analyst report attributing 12:27:10
6 the slowdown to the introduction of the overlapping
7 carne asada and shrimp LTOs?

8 A I hate to do this but I just want to hear
9 your words again.

10 Q Let me ask it to you differently. 12:27:48

11 Does the May 15th analyst report attribute
12 the slowdown in May to the introduction of the carne
13 asada and shrimp LTOs?

14 A Essentially, yes.

15 Q Does -- 12:28:26

16 A Although --

17 MR. LLORENS: Let him finish the answer.

18 THE WITNESS: But my only caveat is the
19 bullet point ends by saying this is what management
20 believes. 12:28:35

21 So they're saying they have no other
22 explanation. They're presenting this as the
23 explanation and emphasizing that it's what
24 management has offered as the explanation.

25 BY MR. FUMERTON: 12:28:45

Page 144

1 Q And the explanation to which you're
2 referring is the overlapping of the shrimp and carne
3 asada LTOs, correct?

4 A Right.

5 Q Turning back to the August 13th Blair 12:28:55
6 analyst report, Exhibit 37.

7 On August 13th is Blair attributing the
8 weakness or slowdown in May to the overlapping LTOs
9 of shrimp and carne asada?

10 A Not fully because it says, "Trends softened 12:29:15
11 as the quarter progressed with expected weakness in
12 May...."

13 So at least some of the expected weakness
14 in May is for that reason, but it also says, "Trends
15 softened as the quarter progressed...." 12:29:32

16 And the rest of May is part of the rest of
17 the quarter.

18 Q What is Blair attributing the expected
19 weakness in May to in this August 13, 2015, report?

20 A Partially, the two-protein introduction but 12:29:55
21 they leave open that it's not just that because it
22 says, "Trends softened as the quarter
23 progressed...."

24 Q And "as the quarter progressed" refers to
25 the more weakness in June with the launch of 12:30:16

Page 145

1 hand-carved salads, correct?

2 A Not necessarily. They do say there was
3 more weakness in June but they don't say that these
4 two explanations are the only explanations for the
5 trends softening as the quarter progressed. 12:30:32

6 Q Do you see a parenthetical following the
7 words "expected weakness in May"?

8 A I do.

9 Q What does that parenthetical refer to?

10 A Well, it certainly refers to a component of 12:30:41
11 the weakness in May that was expected, that being
12 overlapping high-ticket, limited-time offerings of
13 both shrimp and carne asada.

14 Q And does it attribute any other factor to
15 the weakness in May other than the overlapping of 12:31:03
16 shrimp and carne asada?

17 A There are no other factors for May that are
18 explicitly cited, but it does say that "Trends
19 softened as the quarter progressed....," and the rest
20 of May is part of the quarter that progressed. 12:31:17

21 (Exhibit 39 was marked for
22 identification by the court reporter
23 and is attached hereto.)

24 MR. FUMERTON: Mark as Exhibit 39 a
25 Morgan Stanley analyst report for El Pollo Loco 12:32:30

Page 146

1 and indicated and quantified by an event study, then
2 the inflation after that date would be higher and
3 the inflation before that date would be lower. So
4 we would -- the methodology would identify when the
5 inflation was introduced. 01:23:10

6 Q Do you have a view as to whether there were
7 any fraud-related residual price increases during
8 this class period?

9 A I haven't done a damages analysis yet so
10 no. 01:23:22

11 Q Is your belief that artificial inflation in
12 the stock price can vary over a class period?

13 A It can.

14 Q And you've just described an instance of
15 that? 01:23:35

16 A Yes.

17 Q Now, earlier we discussed the fact that
18 plaintiffs are asserting a claim under Section 20A,
19 cap A, of the Exchange Act against certain
20 defendants. 01:24:20

21 Do you recall that?

22 A Yes.

23 Q And you testified earlier that you'd made a
24 determination as to whether Section 28 damages could
25 be computable on a class-wide basis, correct? 01:24:29

Page 155

1 A Yes.

2 Q You did not include that in your report,
3 though, however, correct?

4 A Not explicitly, correct.

5 Q Why didn't you include it in your report? 01:24:39

6 A I believe at the time of the initial
7 engagement it wasn't explicitly spelled out as part
8 of the scope but later, subsequently, it was
9 commented on.

10 Q You say "commented on." Counsel didn't 01:24:54
11 tell you to opine on whether Section 20A damages
12 could be computable on a class-wide basis in your
13 report?

14 A Well, just as it's not explicitly in my
15 report, but I believe it's addressed. They didn't 01:25:08
16 explicitly include it in the scope but may have
17 considered it --

18 Q Where is it --

19 A -- part of the general scope.

20 Q Where is it implicitly addressed in the 01:25:17
21 report?

22 A Well, the -- where I reference that there
23 are statutory and case law formulas for damage
24 computation in these cases.

25 I mean, I'm not inventing these formulas. 01:25:31

Page 156

1 These formulas were used in many cases by other
2 people before me. Same -- and when it comes to 20A,
3 it's even more so the case that the damage formula
4 is spelled out in the statute.

5 Q Have you ever offered an opinion 01:25:44
6 calculating damages in connection with a Section 20A
7 claim?

8 A I believe I have.

9 Q Have you ever offered a report?

10 A I believe so. I can't tell you exactly 01:25:53
11 which case but I believe so.

12 Q In Paragraph 164, you state that plaintiffs
13 asked you to opine on whether Section 10(b) damages
14 could be computable on a class-wide basis, correct?

15 A That's right. 01:26:14

16 Q You have no reference to Section 20A here
17 or anywhere else in the report?

18 A That's right.

19 Q At what point did counsel tell you to
20 determine whether Section 20A damages could be 01:26:28
21 computable on a class-wide basis?

22 A You mean, chronologically? When?

23 Q Yes.

24 A I believe it must have been within the last
25 week in preparation for the deposition. 01:26:38

Page 157

~~CONFIDENTIAL~~

1 Q Did counsel tell you why you should make a
2 determination as to whether Section 20A damages
3 should be computable on a class-wide basis?

4 A No.

5 Q How many times have you offered an opinion 01:27:02
6 on Section 20A damages?

7 A I don't know.

8 Q Fair to say multiple occasions?

9 A Yes.

10 Q And have you also opined as to whether 01:27:37
11 Section 20A damages could be calculated on a
12 class-wide basis?

13 A I just don't recall specifics of other
14 cases with regard to that question.

15 (Exhibit 43 was marked for 01:27:46
16 identification by the court reporter
17 and is attached hereto.)

18 MR. FUMERTON: Marking as Exhibit 43 a
19 Report on Market Efficiency and Damages you
20 submitted on February 6, 2015, in an action 01:28:28
21 captioned Gordon v. Sonar Capital Management LLC,
22 et al., case No. 11-CV-9665, in the Southern
23 District of New York.

24 Q Do you see that?

25 A Yes. 01:28:48

Page 158

~~CONFIDENTIAL~~

1 (Exhibit 45 was marked for
2 identification by the court reporter
3 and is attached hereto.)

4 MR. FUMERTON: We're marking as Exhibit 45

5 15 U.S.C.A. Section 78-T1. 01:51:22

6 MR. BAKER: That was 44.

7 MR. FUMERTON: Strike that. Let's try
8 again.

9 Mark it as Exhibit 45 15 U.S.C.A.
10 Section 78bb. 01:51:41

11 THE WITNESS: Okay.

12 BY MR. FUMERTON:

13 Q Do you see that, sir?

14 A Yes.

15 Q And under Section (a) Limitation on 01:51:48
16 judgments, the statute states, quote:

17 "No person permitted to maintain a
18 suit for damages under the provisions
19 of this chapter shall recover, through
20 satisfaction of judgment in one or 01:52:04
21 more actions, a total amount in excess
22 of the actual damages to that person
23 on account of the act complained of."

24 Do you see that?

25 A I do. 01:52:15

Page 174

~~CONFIDENTIAL~~

1 Q And this was the actual damage or actual
2 loss cap to which you testified about earlier,
3 correct?

4 A Yes.

5 Q And it's your understanding that this cap 01:52:21
6 applies to all claims under the Exchange Act,
7 correct?

8 MR. LLORENS: Objection. It's outside the
9 scope of his market efficiency report and it calls
10 for a legal conclusion. 01:52:35

11 BY MR. FUMERTON:

12 Q You're an expert on these statutes. It's
13 your conclusion that this cap applies to all claims
14 under the Exchange Act, correct?

15 MR. LLORENS: Objection. It misstates his 01:52:43
16 prior testimony about being an expert to all these
17 statutes.

18 THE WITNESS: Well, my opinion, as
19 expressed in the report, is that damages can be
20 calculated in a manner using a common methodology 01:53:09
21 for all class members. That's the conclusion.

22 I'd want to review more of the
23 documentation in order to render an opinion that's
24 outside the report about whether this cap pertains
25 to all provisions in the Exchange Act. 01:53:28

Page 175

1 BY MR. FUMERTON:

2 Q You see the words "provisions of this
3 chapter" in what I just read you?

4 A Yes.

5 Q Do you know what "provisions of this 01:53:51
6 chapter" is referring to?

7 A Not 100 percent sure.

8 MR. LLORENS: Objection. Calls for a legal
9 conclusion.

10 (Reporter clarification.) 01:54:03

11 THE WITNESS: I'm not 100 percent sure
12 whether it's Section 10 or the entire Exchange Act.

13 BY MR. FUMERTON:

14 Q So sitting here today, you have no idea
15 whether this provision applies to damages under 01:54:16
16 Section 20A.

17 Is that your testimony?

18 A I don't spell that out in my report. And
19 in order to render an opinion one way or the other,
20 I would want to review the documents more 01:54:32
21 thoroughly.

22 Q What documents would you need to review to
23 answer that question about the application of this
24 provision?

25 A The full text of the Exchange Act as 01:54:41

Page 176

1 amended.

2 Q Did you apply this cap on 20A damages in
3 the Gordon report?

4 A Yes. But as I said, that may have been on
5 account of instructions or recommendations from the 01:54:57
6 attorneys to provide a conservative methodology for
7 calculating damages in that particular case.

8 Q What do you mean by "conservative" there?

9 A A lower bound or a number that's more
10 conservative than what could reasonably be construed 01:55:44
11 from the application of the statute.

12 Q You testified several times that you
13 opined -- strike that.

14 You testified several times today that you
15 formed an opinion as to whether Section 20A damages 01:55:58
16 and Section 10(b) damages could be computable on a
17 class-wide basis. Do you recall that?

18 A Yes.

19 Q And in forming that opinion, you're unable
20 to tell me whether the limitation on judgments set 01:56:12
21 forth in 15 U.S.C.A. 78bb applies to either section?

22 A Absolutely, because it doesn't -- it would
23 not affect that conclusion that the arithmetic
24 formula can be applied to all class members.

25 I mean, the inputs, the argument values in 01:56:35

Page 177

1 the formula, may be different from one investor to
2 another, but the formula would be common.

3 Q You've testified earlier that you've
4 offered an opinion calculating Section 20A damages
5 in other cases, correct? 01:56:50

6 A Well, you just gave me -- yeah, I think we
7 have an example of one in front of me.

8 Q And in performing that calculation would
9 you need to know whether Section 78bb entitled
10 "Limitation on judgments" applied to Section 20A 01:57:02
11 claims?

12 MR. LLORENS: Objection. Outside of the
13 scope of this market efficiency report.

14 BY MR. FUMERTON:

15 Q You can answer. 01:57:12

16 A Not necessarily. In fact, it's altogether
17 possible that what was explained and understood at
18 the time of this report from three years ago was
19 that there's some ambiguity in the statute and as a
20 result I should interpret the ambiguity in the most 01:57:27
21 conservative manner.

22 Q Can you point to me any ambiguity in this
23 provision?

24 A Yes. We've been talking about it's not
25 clear whether it provide -- it pertains to 01:57:38

Page 178

~~CONFIDENTIAL~~

1 Section 20A as well as 10b-5.

2 You said that it's clear and that it says,
3 "provisions of this chapter," but exactly what it
4 means by "this chapter" is, at least at this point,
5 somewhat ambiguous to me -- 01:57:53

6 Q Are you aware of case law applying this
7 provision to Section 20A claims?

8 A Not as I sit here now, I can't cite for you
9 case law about that point in particular.

10 Q Turning back to Paragraph 140 of the Gordon 01:58:06
11 report, you state, quote, "The statute" -- and,
12 again, we're talking about Section 20A; is that
13 correct?

14 A Yes.

15 Q -- "provides that persons engaged 01:58:32
16 in insider trading are liable for
17 damages to other market participants
18 who trade 'contemporaneously' with the
19 insiders."

20 Do you see that? 01:58:42

21 A Yes.

22 Q Do you have any understanding of why this
23 contemporaneous requirement is contained in the
24 statute?

25 A I'm not a lawyer. 01:58:48

Page 179

~~CONFIDENTIAL~~

1 MR. LLORENS: Objection. Calls for a legal
2 opinion.

3 BY MR. FUMERTON:

4 Q I'm not asking you for your legal opinion.
5 I'm asking you for your understanding. 01:58:52

6 A Well, I'm not a lawyer or a lawmaker so I
7 can't speak to what the lawmaker's intent was when
8 they included that word in that provision.

9 Q Do you have any understanding of the
10 contemporaneous requirement in Section 20A and the 01:59:06
11 reason it's in there?

12 MR. LLORENS: Objection. Vague and calls
13 for a legal conclusion.

14 BY MR. FUMERTON:

15 Q You can answer. 01:59:10

16 A Not as an economist, but just -- I -- no.
17 I mean, I'm not -- I'm not going to offer a
18 professional opinion about the motivation for that
19 provision being included in the law.

20 Q You're saying you're not going to offer one 01:59:29
21 because you can't?

22 MR. LLORENS: Objection. Misstates his
23 prior testimony.

24 THE WITNESS: It was not -- well, it's not
25 part of my report. It wasn't relevant to any of the 01:59:37

Page 180

~~CONFIDENTIAL~~

1 conclusions or analysis, methodology, findings or
2 conclusions in my report.

3 And although I might have some
4 understanding, it's not derived from the expertise
5 that I am holding out as -- in my credentials here 01:59:53
6 today.

7 BY MR. FUMERTON:

8 Q What is that understanding?

9 A Like I said, I'm not going to -- I'm not
10 going to speculate about the motivation of the 02:00:04
11 lawmakers for including that provision. It's
12 outside my area of expertise, assessing and
13 speculating about their motivation.

14 Q You just testified you had an understanding
15 of the reason the contemporaneous requirement's in 02:00:16
16 the statute. I'm asking you what that understanding
17 was.

18 MR. LLORENS: Objection. Misstates his
19 prior testimony.

20 BY MR. FUMERTON: 02:00:23

21 Q Answer the question.

22 MR. LLORENS: If you can.

23 THE WITNESS: Well, I'll caveat it by
24 saying that it's an understanding that's -- of law
25 that's derived from my experience working with these 02:00:34

Page 181

~~CONFIDENTIAL~~

1 provisions but not from my credentials and expertise
2 that I -- that qualify me as an expert in this area,
3 which is the reason I was reluctant to offer the
4 understanding.

5 But -- so your question is, then, as a 02:00:55
6 layperson why might the lawmakers have included a
7 provision that says that the damages are owed to the
8 people who traded contemporaneously?

9 With all of those caveats, it seems that
10 they are the ones who would have been damaged by the 02:01:13
11 insider trading; that if one person is benefitting
12 from trading at an -- from selling at an inflated
13 high price or buying at an -- at an artificially
14 deflated low price, that the person they're trading
15 with would have had the benefit of selling at a 02:01:32
16 higher price or buying at a lower price.

17 BY MR. FUMERTON:

18 Q Now, when an insider sells their shares in
19 the open market is it possible to determine who
20 purchased those shares? 02:01:44

21 MR. LLORENS: Objection. It's outside the
22 scope of his market efficiency report.

23 BY MR. FUMERTON:

24 Q You can answer.

25 MR. LLORENS: If you can. 02:01:50

Page 182

~~CONFIDENTIAL~~

1 THE WITNESS: The shares are fungible so
2 you can't usually, on an open-market transaction,
3 trace exactly who received the shares that a
4 particular seller is selling on a particular day.
5 But you -- but that's not to say that you have no 02:02:17
6 information whatsoever.

7 I mean, you've -- you can assess -- you can
8 narrow down the pool of the buyers to the people who
9 bought that day and you can assess the probability
10 that they received those shares by -- based on the 02:02:33
11 size of a particular trader's trades relative to the
12 number of shares that traded that day.

13 BY MR. FUMERTON:

14 Q Now, you --

15 A So it's not like there's no information. 02:02:42
16 But you can't conclusively identify who received
17 particular shares if it's an open-market trade.

18 Q I think you testified earlier that you are
19 aware that certain insiders sold shares during the
20 class period. 02:02:59

21 A That's right.

22 Q Is that correct?

23 And if you turn to Paragraph 11 of the
24 Third Amended Complaint, which is Exhibit 3 --

25 A Okay. 02:03:32

Page 183

~~CONFIDENTIAL~~

1 Q -- you see it lists various defendants, the
2 date sold and the shares sold?

3 A Yes.

4 Q And the controlling shareholder defendants,
5 Mr. Sather, Mr. Valle, are alleged to have all sold 02:03:42
6 their shares on May 19th, 2015; is that correct?

7 A Yes.

8 Q And those three entities are alleged to
9 have sold approximately 5 -- approximately 6 million
10 shares? 02:04:05

11 A Yes, approximately.

12 Q Do you have any understanding of who bought
13 the shares from these defendants on May 19th?

14 MR. LLORENS: Objection. It's outside the
15 scope of his -- 02:04:15

16 (Speaking simultaneously.)

17 BY MR. FUMERTON:

18 Q You can answer.

19 MR. LLORENS: -- market efficiency report.

20 -- if you have an opinion on who bought 02:04:18
21 their shares --

22 (Speaking simultaneously.)

23 MR. FUMERTON: For the record --

24 MR. LLORENS: -- you can answer.

25 MR. FUMERTON: -- the only reason it's 02:04:23

Page 184

1 outside the scope of the report is because --

2 MR. LLORENS: Because it has nothing to do
3 with market efficiency. That's why.

4 MR. FUMERTON: Do not cut me off. Let me
5 finish. I have not interrupted you once. Do not 02:04:33
6 cut me off.

7 The only reason it's not in your report is
8 because for some reason your expert failed to
9 disclose his opinion that Section 20A damages could
10 be calculated on a class-wide basis. 02:04:45

11 Q Sir, answer the question.

12 A My understanding is these shares were sold
13 through Jefferies or sold to Jefferies investment
14 bank.

15 Q And they were sold in a block trade; is 02:04:56
16 that correct?

17 A That's my understanding.

18 Q What's a block trade?

19 A A large trade off the -- off of the
20 exchange. 02:05:04

21 Sometimes off the -- it can be off the
22 exchange or it can be on the exchange but it can
23 often --

24 (Reporter clarification.)

25 -- it can also be off the exchange. 02:05:13

Page 185

CONFIDENTIAL

1 Shares sold in a block to an institution.

2 Q Are you aware whether these shares were
3 sold off or on the market as part of this block
4 trade?

5 A This volume ^{is not} ~~is~~ included in market volume 02:05:23
6 that day so it would have been off the market.

7 Q Who is the party who suffered damages as a
8 result of this block trade?

9 A I did not do a damages calculation yet, or
10 damage assessment. 02:05:43

11 Q I'm asking you as an economic matter, who
12 suffered damages as a result of this block trade on
13 May 19th, 2015?

14 A I would need to do a loss causation and
15 damage calculation in order to answer that question, 02:05:56
16 neither of which I have done yet.

17 Q Who are the universe of entities that could
18 have been damaged in a block trade to Jefferies on
19 May 19th, 2015?

20 MR. LLORENS: Objection. Outside the scope 02:06:11
21 of his market efficiency report and it's been asked
22 and answered.

23 THE WITNESS: It takes time and effort and
24 attention and analysis to answer those sorts of
25 questions. I'm not going to do it on the fly here 02:06:22

Page 186

1 without the benefit of documents and the requisite
2 time.

3 BY MR. FUMERTON:

4 Q In your view, could Jefferies have been
5 damaged by the block trade on May 19th? 02:06:33

6 MR. LLORENS: Objection. It's outside the
7 scope of his market efficiency report.

8 BY MR. FUMERTON:

9 Q You can answer.

10 A I'm not going to speculate about the 02:06:41
11 conclusion of a damage analysis that I haven't yet
12 conducted.

13 Q Answer the -- answer the question.

14 MR. LLORENS: He just did.

15 If that's what your answer is, that's what 02:06:48
16 your answer is. Don't let him bully you into saying
17 something --

18 THE WITNESS: Okay.

19 MR. LLORENS: -- you don't want to say.

20 BY MR. FUMERTON: 02:06:54

21 Q Are you refusing to answer my question?

22 MR. LLORENS: He answered your question.

23 BY MR. FUMERTON:

24 Q Sitting here today with your expertise in
25 analyzing and quantifying damages under federal 02:07:03

Page 187

~~CONFIDENTIAL~~

1 statutes which you testified including Section 20A,
2 could Jefferies have been damaged by the block trade
3 on May 19th?

4 MR. LLORENS: Objection.

5 BY MR. FUMERTON: 02:07:13

6 Q Yes or no?

7 MR. LLORENS: It's outside the scope of his
8 market efficiency report --

9 (Speaking simultaneously.)

10 BY MR. FUMERTON: 02:07:17

11 Q Answer the question.

12 MR. LLORENS: -- and it's been asked and
13 answered.

14 THE WITNESS: Well, having the expertise to
15 conduct the analysis is not the same thing as doing 02:07:24
16 the analysis. I haven't yet done a damages analysis
17 so I can't -- I don't have the answer to your
18 question because I haven't done the analysis yet.

19 BY MR. FUMERTON:

20 Q Have you done an analysis of who has a 02:07:36
21 Section 20A claim here?

22 A No.

23 Q You have no idea who has a Section 20A
24 claim here?

25 A Well, I haven't -- I've read the complaint. 02:07:49

Page 188

~~CONFIDENTIAL~~

1 I can see what the allegations are but I don't have
2 an independent conclusion based on my own analysis
3 of who has a claim or who suffered damages.

4 Q Who do plaintiffs allege have a Section 20A
5 claim? 02:08:04

6 A I'm going to refer to the complaint for
7 that.

8 Paragraph 1 says that the complaint is:

9 "...on behalf of all purchasers of
10 El Pollo Loco securities between 02:08:19
11 May 15th, 2015 and August 13th, 2015,
12 inclusive..." "...seeking remedies
13 pursuant to" -- among other things --
14 "...Section 20A of the Securities
15 Exchange Act of 1934...." 02:08:35

16 Q So your view, anyone who purchased between
17 May 15th, 2015 and August 13th, 2015, has a
18 Section 20A claim against defendants.

19 That's your testimony?

20 A No. 02:08:51

21 Q So let me ask you again.

22 Which plaintiffs here have a Section 20A
23 claim against defendants?

24 A You say you're asking the question again.

25 I'll just say that my answer is the same as the last 02:09:03

Page 189

1 time you asked it.

2 Q Turning back to the Gordon report, in
3 Paragraph 152 --

4 A Okay.

5 Q -- you calculate per-share 20A damages for 02:09:38
6 six different time periods; is that correct?

7 A Yes.

8 Q And why did you calculate damages for these
9 six periods?

10 MR. LLORENS: Objection. It's outside the 02:10:02
11 scope of his El Pollo Loco marketing efficiency
12 report.

13 THE WITNESS: Well, the report explains
14 that -- Paragraph 141:

15 "Plaintiffs' attorneys instructed 02:10:21
16 me to consider various definitions of
17 contemporaneous periods in estimating
18 damages."

19 To that end, I provided estimates for six
20 different definitions of a contemporaneous period. 02:10:33

21 BY MR. FUMERTON:

22 Q What are those six periods?

23 A Paragraph 141 continues.

24 "The first definition of
25 contemporaneous period is the very 02:10:41

Page 190

~~CONFIDENTIAL~~

1 same day that defendants traded, which
2 is denoted 'T+0.' The second
3 definition, denoted 'T+1,' comprises
4 the day that defendants traded and the
5 next trading day. The next three 02:10:53
6 definitions of contemporaneous period
7 each include one additional
8 incremental day after the defendants'
9 trade date, respectively, and are
10 denoted 'T+3,' 'T+4,' and 'T+5.'" 02:11:04

11 Q And do you have any view as to which of
12 these periods constitutes trading contemporaneously
13 with the insider?

14 MR. LLORENS: Objection. Calls for a legal
15 conclusion. 02:11:16

16 THE WITNESS: You mean in the Gordon case
17 or in the --

18 BY MR. FUMERTON:

19 Q In the Gor- -- in the Gordon case.

20 A I believe the reason the attorneys asked 02:11:22
21 for several different definitions is there's some
22 ambiguity. And so providing a range and a --
23 essentially, a scenario analysis, would provide the
24 court with information regardless of whichever
25 particular definition the court decided on. 02:11:39

Page 191

1 So, no, I didn't have a -- I didn't have an
2 opinion, but it was my understanding that it would
3 be determined in the course of the process of the
4 case.

5 Q And the maximum length of time you went out 02:11:48
6 from the trading date on this analysis was five
7 days, correct?

8 A Five days beyond the current day. So it's
9 a group of six days.

10 Q Were there any block trades at issue in the 02:11:59
11 Gordon case?

12 A I don't recall.

13 Q Would that have affected your Section 20A
14 analysis?

15 A I don't think so but I don't recall with 02:12:06
16 certainty.

17 Q So it's your testimony that under
18 Section 20A if you can identify precisely who
19 purchased the insider shares in an off-market block
20 trade, you can't tell me who has the Section 20A 02:12:21
21 claim?

22 A I think that's a legal determination that
23 I'm not prepared to offer.

24 Q You can't answer the question?

25 A Well, the question is almost the definition 02:12:37

Page 192

1 of a legal conclusion and I'm not here to render
2 legal opinions.

3 Q As an economic matter, who's damaged in a
4 block trade?

5 MR. LLORENS: Objection. It's outside the 02:12:53
6 scope of his market efficiency report.

7 THE WITNESS: That's a complicated
8 question, which may not be completely addressed in
9 the statutes, in the legal statutes and case law.

10 I -- I can't offer an opinion about all the 02:13:24
11 people who are damaged but I can offer an opinion
12 that given the range of possible ways of
13 interpreting the law, the formula that is agreed
14 upon could be applied in a manner common for all
15 class members. 02:13:43

16 BY MR. FUMERTON:

17 Q You can't answer the question as an
18 economic matter who's damaged in a block trade?

19 MR. LLORENS: Objection.

20 THE WITNESS: It's not as easy -- 02:13:53

21 MR. LLORENS: The question's been asked and
22 answered.

23 THE WITNESS: Well, I mean, there's a lot
24 of considerations. It's -- it's not as easy as you
25 might purportedly be trying to -- as you might be 02:14:02

Page 193

~~CONFIDENTIAL~~

1 trying to make it look.

2 There are certainly the traders who are
3 unwittingly trading at skewed prices. There may be
4 other traders and market participants whose trades
5 are affected by those skewed prices and volumes. 02:14:27

6 BY MR. FUMERTON:

7 Q Assume Jefferies purchased the 6 million
8 shares from the defendants -- which I believe you
9 testified that was your understanding, correct?

10 A Yes. 02:14:38

11 Q -- on May 19th, correct?

12 A Okay.

13 Q And Jefferies never resold those shares
14 into the market.

15 Are you with me? 02:14:47

16 A Well, I'll assume it for the sake of your
17 hypothetical, sure.

18 Q As an economic matter, who suffered
19 damages, if anyone, in that transaction?

20 MR. LLORENS: Objection. Calls for a legal 02:15:00
21 conclusion, it's outside of the scope of his --

22 MR. FUMERTON: Counsel, I asked as an
23 economic matter. If that's not within the subject
24 of his expertise --

25 (Speaking simultaneously.) 02:15:09

Page 194

~~CONFIDENTIAL~~

1 MR. LLORENS: You just --

2 MR. FUMERTON: -- you have no --

3 MR. LLORENS: -- said you never cut me off.

4 Are you going to let me finish my

5 objection, or do you intend on cutting me off every 02:15:13

6 time I make an objection?

7 MR. FUMERTON: I thought you were finished.

8 I apologize.

9 MR. LLORENS: Do you want to ask it again

10 so I can object? 02:15:20

11 MR. FUMERTON: Well, you ask -- you

12 objected on the grounds it called for a legal

13 conclusion when I asked him as an economic matter.

14 So the objection was frivolous.

15 MR. LLORENS: It was not frivolous and I 02:15:33

16 didn't finish my objection.

17 The latter part of my objection is that

18 it's outside the scope of his market efficiency

19 report which is what we're here to discuss.

20 BY MR. FUMERTON: 02:15:43

21 Q Sir, do you recall the hypothetical I've

22 given you?

23 A Yes.

24 Q Jefferies purchases all 6 million shares on

25 May 19th in the block trade off market, correct? 02:15:50

Page 195

~~CONFIDENTIAL~~

1 A Right.

2 Q Jefferies never resells them into the
3 market, correct?

4 A Well, you're asking me to assume that.

5 Q As an economic matter, who, if anyone, 02:15:58
6 suffered potential damages in that transaction?

7 MR. LLORENS: Same objections.

8 THE WITNESS: Well, if that's the scope of
9 an engagement, I would begin extensive analysis and
10 perhaps some research in order to answer the 02:16:15
11 question. It's not something that can be answered
12 without further research and analysis.

13 BY MR. FUMERTON:

14 Q Is it possible that a party other than
15 Jefferies suffered damages -- 02:16:25

16 A It's certainly possible.

17 Q -- as part of that transaction?

18 MR. LLORENS: Same objections.

19 THE WITNESS: It's possible.

20 BY MR. FUMERTON: 02:16:32

21 Q Under what circumstances could a party
22 other than Jefferies suffer damages as a result of
23 that block trade?

24 MR. LLORENS: Same objections.

25 THE WITNESS: It's the kind of thing I'd 02:16:39

Page 196

1 want to research in order to confidently answer the
2 question.

3 The trade may have skewed, impacted --
4 "perturbed" is a word that's used in the
5 profession -- prices and transaction considerations. 02:16:54
6 I just wouldn't want to rule out that anyone else
7 besides Jefferies suffered without doing the
8 appropriate analysis.

9 And we're -- let's take a break.

10 BY MR. FUMERTON: 02:17:07

11 Q Answer the question.

12 A I did just --

13 Q We'll take a break after you answer the
14 question.

15 A Well, I'm done with my answer. And you 02:17:13
16 said at the beginning when there's no question
17 pending, I can call for a break.

18 Q Okay. I want to follow up and then we can
19 take a break.

20 A Well, you said at the very beginning that I 02:17:21
21 can ask for a break --

22 MR. FUMERTON: Counsel, if we take a break,
23 you cannot discuss this line of questioning in the
24 break room or else we'll stay on the record.

25 MR. LLORENS: You're telling me what I can 02:17:29

Page 197

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand which was thereafter transcribed under my
10 direction; that the foregoing transcript is a true
11 record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: 2/12/2018

22
23 

24 LORI SCINTA, RPR

25 CSR No. 4811

Page 235

Exhibit 4

REDACTED VERSION OF
DOCUMENT PROPOSED TO BE
FILED UNDER SEAL

CONFIDENTIAL

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

DANIEL TUROCY, et al.,
individually and on behalf
of all others similarly
situated,

Plaintiffs,

vs.

EL POLLO LOCO HOLDINGS,
INC., et al.,

Defendants.

)

)

)

)

)

)

)

)

) Case No.

) 8:15-cv-01343-DOC-KES

) (Consolidated)

)

)

)

)

C O N F I D E N T I A L

VIDEOTAPED DEPOSITION OF PETER KIM

Los Angeles, California

Tuesday, February 13, 2018

Volume I

Reported by:

LORI SCINTA, RPR

CSR No. 4811

Job No. 2816992

PAGES 1 - 119

Page 1

1 APPEARANCES:

2
3 For Plaintiffs:

4 ROBBINS GELLER RUDMAN & DOWD LLP

5 BY: RYAN A. LLORENS

6 Attorney at Law

7 655 West Broadway

8 Suite 1900

9 San Diego, California 92101

10 619.231.1058

11 Email: rllorens@rgrdlaw.com

12 -- and --

13 THE ROSEN LAW FIRM

14 BY: JOSH BAKER

15 Attorney at Law

16 275 Madison Avenue

17 34th Floor

18 New York, New York 10016

19 212.686.1060

20 Email: jbak@rosenlegal.com

21 (Of record but not present)

22
23
24
25
Page 3

1 APPEARANCES (Continued):

2

3 For Defendants:

4 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP

5 BY: ROBERT A. FUMERTON

6 MICHAEL RESTEY

7 Attorneys at Law

8 Four Times Square

9 New York, New York 10036

10 212.735.3902

11 Email: robert.fumerton@skadden.com

12

13 Videographer:

14 DAVID WEST

15

16

17

18

19

20

21

22

23

24

25

Page 4

1 Los Angeles, California, Tuesday, February 13, 2018

2 9:06 A.M.

3
4 THE VIDEOGRAPHER: Good morning. We are on
5 the record. The time is 9:06 A.M. The date today, 09:06:12
6 February 13, 2018. Please note that the microphones
7 are sensitive and may pick up whispering, private
8 conversations, and cellular interference. Please
9 turn off all cellphones or place them away from the
10 microphones as they can interfere with the 09:06:31
11 deposition audio. Audio and video recording will
12 continue to take place unless all parties agree to
13 go off the record.

14 This is Media Unit 1 of the video-recorded
15 deposition of Peter Kim taken by counsel for 09:06:44
16 defendant in the matter of Daniel Turocy, et al.,
17 versus El Pollo Loco Holdings, Inc., et al., filed
18 in United States District Court, Central District of
19 California, Southern Division, case
20 No. 8:15-cv-01343-DOC-KES. 09:06:58

21 The deposition is being held at 300 South
22 Grand Avenue, Suite 3200, Los Angeles, California.

23 My name is David West. I am the
24 videographer. The court reporter is Lori Scinta.
25 We are from Veritext Legal Solutions. 09:07:22

Page 8

1 I am not authorized to administer an oath.

2 I am not related to any party in this action, nor am

3 I financially interested in the outcome.

4 Counsel and all present in the room will

5 now state their appearances and affiliations for the 09:07:34

6 record.

7 If there are any objections to proceeding,

8 please state them at the time of your appearance,

9 beginning with the noticing attorney.

10 MR. FUMERTON: Robert Fumerton, 09:07:44

11 Michael Restey, from Skadden, Arps for defendants.

12 MR. LLORENS: Ryan Llorens from Robbins

13 Geller for the witness and plaintiffs.

14 THE VIDEOGRAPHER: Thank you.

15 THE WITNESS: Peter Kim. 09:07:55

16 THE VIDEOGRAPHER: Thank you.

17 The court reporter may now swear in the

18 witness, and we will proceed.

19

20 PETER KIM, 09:08:00

21 having been administered an oath, was examined and

22 testified as follows:

23

24 ///

25 ///

Page 9

EXAMINATION

BY MR. FUMERTON:

Q Good morning, Mr. Kim.

A Good morning.

Q Please state your full name and address for the record. 09:08:14

A Peter Kim. [REDACTED]
La Habra, California 90631.

Q Mr. Kim, have you ever been deposed before?

A Have I ever been? 09:08:30

Q Deposed before?

A No.

Q So I want to go over the ground rules. I'm going to ask a series of questions. From time to time your counsel may object but you have to answer unless your counsel instructs you not to answer. 09:08:40

Understood?

A Yes.

Q Let's do our best not to talk over each other. The court reporter can only take down one of us at a time. Let me finish my questions before you answer. I'll do my best to let you finish your answer before asking you another question. 09:08:49

Understood?

A Understood. 09:08:59

Page 10

1 I don't know how to answer that at this
2 stage.

3 BY MR. FUMERTON:

4 Q Sitting here today, do you believe that it
5 was inflated on August -- strike that. 11:26:29

6 Sitting here today, do you believe that the
7 price of EPL stock was inflated on May 15th, 2015?

8 MR. LLORENS: Asked and answered.

9 THE WITNESS: I think the price was high in
10 May, if that's what you're asking. 11:26:46

11 BY MR. FUMERTON:

12 Q No. I'm asking do you think it was
13 inflated.

14 A I don't know.

15 Q Do you think that the price of EPL stock 11:26:53
16 was inflated on August 14th, 2015?

17 A On August 14?

18 Q On August 14, 2015.

19 A Well, even at that point, we're at 14
20 compared to August 20, we're at 12. It's definitely 11:27:28
21 higher.

22 Q And do you have a view as to whether it was
23 inflated on August 14th?

24 A I think it was higher.

25 Q That's not what I asked you. I asked: Do 11:27:45

Page 79

1 you think the stock was inflated on August 14th?

2 MR. LLORENS: Objection. Asked and
3 answered and it's vague and ambiguous.

4 THE WITNESS: I don't recall.

5 BY MR. FUMERTON: 11:27:58

6 Q I'm not asking whether you recall.

7 Sitting here today, do you have a view one
8 way or the other as to whether the price of EPL
9 stock was inflated on August 14th --

10 MR. LLORENS: Same objections. 11:28:08

11 BY MR. FUMERTON:

12 Q -- 2015?

13 A On August 14, was it inflated? I think to
14 some degree.

15 Q What caused the stock price to decline 11:28:39
16 between August 3rd and August 14th?

17 A What caused the price to decline?

18 I don't recall exactly what -- if it was at
19 that time frame, but I think the -- and I'm not
20 sure, but I think maybe there's some things came 11:29:28
21 out -- some things came out that made the -- the
22 stock, EPL, not look as promising.

23 Q And do you recall what those things that
24 came out were?

25 A Well, time frame of it, not sure, but I do 11:29:51

Page 80

1 know that it was the -- the fact that they got rid
2 of their value pricing menu, and I think they were
3 conflicting as to whether they're -- they actually
4 are a QSR+ that -- now, that's supposed to be their
5 niche, but -- yeah.

11:30:38

6 Q When did it come out that they were getting
7 rid of their value pricing menu?

8 A I don't recall.

9 Q Couldn't you just walk into an EPL
10 restaurant and see whether there was a value menu?

11:31:03

11 A I guess I could have.

12 Q But you didn't do that during this time
13 period?

14 A I did not.

15 Q What caused the price of EPL stock to
16 decline between August 14th, 2015 and August 20th,
17 2015?

11:31:22

18 A For the most part, I think it's the same
19 answers, just depending on what was more revealed at
20 what time frame and not that I can exactly recall
21 what news came out when. But whether it was the
22 quarterly report or what statements, the fact that
23 they sold -- you know, any of which -- like I don't
24 recall when what was done.

11:31:55

25 Q But -- but more news concerning the alleged

11:32:28

Page 81

1 misstatements came out between August 14th and
2 August 20th, 2015; is that correct?

3 A I don't know.

4 Q Can you think of any other reason why the
5 stock would have declined between August 14th and 11:32:43
6 August 20th, 2015?

7 A Again, I don't know when statements are
8 made as to when the market knows, when the public
9 knows.

10 So those factors I don't know. 11:32:59

11 Q Now, after you sold your EPL stock on
12 August 20th, 2015, you bought EPL stock again at a
13 later date, correct?

14 A Yes.

15 Q And why did you do so? 11:33:16

16 A Same reasons. I consider -- some of it
17 considering the fact that a lot of times you look at
18 a stock that you lost a lot of money on and
19 sometimes you reflect back on it, you wonder how
20 they're doing. You look at the price and you think, 11:33:39
21 oh, maybe -- maybe now it's going to be okay.

22 Q So turning back to the big bundle of
23 documents, which is Exhibit 48 --

24 A Yes.

25 Q -- I want you to flip to the Bates ending 11:34:03

Page 82

CONFIDENTIAL

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

MR. LLORENS: Objection. Misstates his

prior testimony. He never said --

BY MR. FUMERTON:

Q You can answer.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Page 84

CONFIDENTIAL

1

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

■

24

A (No audible response.)

25

Q You have to answer.

11:38:54

Page 85

~~CONFIDENTIAL~~

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were duly sworn; that a record
8 of the proceedings was made by me using machine
9 shorthand which was thereafter transcribed under my
10 direction; that the foregoing transcript is a true
11 record of the testimony given.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify I am neither financially
17 interested in the action nor a relative or employee
18 of any attorney or party to this action.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21 Dated: 2/15/2018

22
23 

24 LORI SCINTA, RPR

25 CSR No. 4811

Page 119

Exhibit 5

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

DANIEL TUROCY, et al., Individually
and on Behalf of All Others Similarly
Situating,

Plaintiffs,

vs.

EL POLLO LOCO HOLDINGS, INC., et
al.,

Defendants

Case No. 8:15-cv-01343-DOC-KES

REPORT OF DANIEL R. FISCHER

March 8, 2018

I. QUALIFICATIONS

1. I am President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. I am also the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. I have served previously as Dean of The University of Chicago Law School, Director of the Law and Economics Program at The University of Chicago, and as Professor of Law and Business at The University of Chicago Graduate School of Business, the Kellogg School of Management at Northwestern University, and the Northwestern University Law School.

2. Both my research and my teaching have concerned the economics of corporate law and financial markets. I have published approximately fifty articles in leading legal and economics journals and am coauthor, with Judge Frank Easterbrook of the Seventh Circuit Court of Appeals, of the book *The Economic Structure of Corporate Law* (Harvard University Press, 1991). Courts of all levels, including the Supreme Court of the United States, have cited my articles as authoritative. My curriculum vitae, which contains a list of my publications, is attached hereto as Appendix A.

3. I have served as a consultant or adviser on economic issues to, among others, the United States Department of Justice, the United States Securities and Exchange Commission, the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the United States Department of

Labor, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Federal Trade Commission.

4. I am a member of the American Economic Association and the American Finance Association. I am also a former member of the Board of Directors of the Center for the Study of the Economy and the State at The University of Chicago, and former Chairman of the American Association of Law Schools' Section on Law and Economics. I have testified as an expert witness in multiple proceedings in federal and state courts across the country, as detailed in Appendix A.

II. INTRODUCTION, ASSIGNMENT, AND SUMMARY OF CONCLUSIONS

5. Lead Plaintiffs claim under Section 20A of the Securities Exchange Act that while in possession of allegedly material non-public information about El Pollo Loco Holdings, Inc. ("EPL" or the "Company"), two of the three officer defendants (Chief Executive Officer Stephen J. Sather and Chief Marketing Officer Edward J. Valle) and Defendant Trimaran Pollo Partners, L.L.C. (together, the "20A Defendants")¹ sold 5,937,500 EPL shares on May 19, 2015 "contemporaneously with Lead Plaintiffs' purchases of El Pollo Loco common stock during the Class Period," causing Lead Plaintiffs to suffer damages.²

-
1. Third Amended Complaint ("TAC") ¶¶ 1, 31 & 130. Although named as defendants to Lead Plaintiffs' Section 20A claim, Defendants Trimaran Capital Partners and Freeman Spogli & Co. are not alleged to have traded EPL shares. *Id.* ¶¶ 92 & 133.
 2. *Id.* ¶¶ 130-135. I understand that the third officer defendant, Chief Financial Officer Laurance Roberts, did not sell any of his Company shares in the block

6. I have been asked by counsel for the 20A Defendants to analyze whether their sale of Company shares on May 19, 2015 caused Lead Plaintiffs to suffer economic injury. In performing this work, I have received assistance from Compass Lexecon personnel working under my supervision.³ A list of materials we have relied upon in connection with the preparation of this report is attached as Appendix B.

7. I have concluded that the EPL shares sold by the 20A Defendants on May 19, 2015 were purchased by a single counterparty, Jefferies LLC (“Jefferies”), not Lead Plaintiffs, and thus Lead Plaintiffs did not sustain economic injury as a result of that alleged insider-trading transaction. The bases for this opinion are provided in the remainder of this report.

III. LEAD PLAINTIFFS DID NOT SUSTAIN ECONOMIC INJURY FROM THE 20A DEFENDANTS’ SALE OF SHARES ON MAY 19, 2015

8. I understand that the 20A Defendants sold EPL shares on May 19, 2015 to a single buyer, Jefferies, in a private, off-market transaction known as a “block trade.”⁴ The price of the 20A Defendants’ private block trade was \$21.85 per share,⁵ below the lowest intraday market price on May 19, 2015 of \$23.20.⁶ The number of shares sold by each 20A Defendant is set forth below:⁷

trade. *Id.* ¶ 92.

3. Compass Lexecon bills for professional services at hourly rates, and also charges fees for administrative expenses and the use of its computer and databases. My hourly rate is \$1,500.
4. *See*, e.g., EPL-0003291-98.
5. TAC ¶ 133; we verified the sale price by reviewing the Forms 4 filed with the Securities and Exchange Commission. *See*, e.g.,

Defendant	EPL Shares Sold to Jefferies on May 19, 2015
Trimaran Pollo Partners, L.L.C.	5,402,500
Stephen J. Sather	360,000
Edward J. Valle	175,000

9. I understand that the private block trade was conducted pursuant to Securities and Exchange Commission Rule 144. I further understand that as part of the block trade process, the parties exchanged letters setting forth the representations made by each party.⁸

10. Lead Plaintiffs were not parties to that transaction and therefore did not suffer economic injury as a result.⁹

11. The fact that Lead Plaintiffs were not the actual purchasers of the shares sold by the 20A Defendants is evident from the private nature of the block trade and the documents evidencing it, which set forth the parties engaged in the transaction.

12. Moreover, Lead Plaintiffs and others who purchased EPL securities subsequent to the time of the 20A Defendants' trade actually paid less

<https://www.sec.gov/Archives/edgar/data/1606366/000120919115045318/xslF345X03/doc4.xml>.

6. See CRSP US Stock and Index Databases ©2017 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business. \$21.85 is also below the closing price on May 18, 2015 of \$24.27. See *id.*
7. TAC ¶ 133.
8. See, e.g., EPL-0004469-75.
9. In their complaint, Lead Plaintiffs list purchases they made on May 19, 2015, May 29, 2015, and June 2, 2015, i.e., up to nine trading days after the 20A Defendants sold their shares, at various purchase prices that all differ from the \$21.85 price the 20A Defendants received: \$22.90, \$23.21, \$20.88, and \$21.99. TAC ¶ 134.

than they otherwise would have because of the 20A Defendants' sales.

Specifically, market participants were aware that Jefferies was selling the block trade shares at a discount to the then-prevailing market price (but above the price the 20A Defendants received) and the decline in EPL's stock price on May 20, 2015 was attributed to this news.¹⁰ Indeed, the statistical analysis of the relationship between information and the Company's stock price movements known as an "event study" that was prepared by Lead Plaintiffs' expert Steven Feinstein shows that the residual return of EPL stock over the two-day period from May 19, 2015 to May 20, 2015 was negative and statistically significant.¹¹

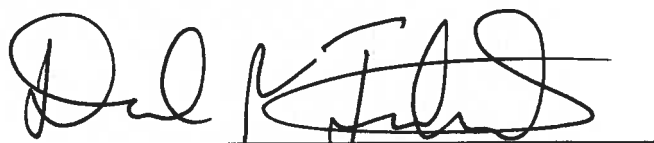
13. I have reviewed the transcript from the deposition of Professor Feinstein, at which he stated that it may be possible that a party other than the purchaser, Jefferies, suffered injury as a result of the block trade, but was unable to provide any detail as to who could have suffered injury or what form such injury would have taken.¹²

10. See *Reuters*, "BUZZ-El Pollo Loco Holdings Inc: Hit again on existing holder sale," May 20, 2015 & *Investor's Business Daily*, "Shake Shack Hits New High Amid NYC Flagship Reopening," May 20, 2015. On May 21, 2015, the 20A Defendants disclosed their sales on Forms 4 filed with the Securities and Exchange Commission. (See, e.g., <https://www.sec.gov/Archives/edgar/data/1606366/000120919115045318/xslF345X03/doc4.xml>.)

11. Professor Feinstein describes his event study analysis in the Report on Market Efficiency of Professor Steven P. Feinstein, Ph.D., CFA dated December 8, 2017 at ¶¶ 106-111. We replicated this analysis and found that the two-day stock residual return in log form is -8.15% and the two-day t-statistic is -2.23, which is considered statistically significant at conventional levels of significance.

12. See Transcript of Videotaped Deposition of Steven P. Feinstein, Ph.D., CFA dated February 9, 2018 at 186:17-200:2.

14. Given Professor Feinstein's decision to exclude this opinion from his report and failure at his deposition to offer any theory or analysis as to how any other party could have been injured by the block trade, it is impossible to provide a specific response to Professor Feinstein's statement. However, as described above, because Lead Plaintiffs were not the purchasers of the shares sold by the 20A Defendants in the alleged insider-trading transaction on May 19, 2015, they did not sustain injury from that private sale of shares.



Daniel R. Fischel

March 8, 2018

Appendix A

DANIEL R. FISCHEL

March 2018

Business Address:

Compass Lexecon
332 South Michigan Avenue
Chicago, Illinois 60604
Tel: 312-322-0209
dfischel@compasslexecon.com

PROFESSIONAL EXPERIENCE

Lee and Brena Freeman Professor of Law and Business, University of Chicago Law School (7/89 – 12/2005, emeritus as of 1/1/2006); Dean of Law School (1/99 – 2/01); Professor of Law, University of Chicago Law School (1/84 - present); Visiting Professor of Law, University of Chicago Law School (7/82 - 6/83).

Professor of Law and Business, Northwestern University School of Law (1/1/2006 – 5/2011).

Professor, Kellogg School of Management (courtesy appointment, 1/1/2006 – 5/2011).

Jack N. Pritzker Distinguished Visiting Professor of Law, Northwestern University School of Law (6/02-6/03).

Professor of Law and Business, University of Chicago Graduate School of Business (7/87 - 6/90).

Director, Law and Economics Program, University of Chicago (1/84 - 6/91).

Assistant Professor of Law, Northwestern University School of Law (6/80 - 6/81); Associate Professor of Law, Northwestern University School of Law (6/81 - 6/82); promoted to full professor in 6/82.

Attorney with Levy and Erens, Chicago, Illinois (7/79 - 6/80).

Law Clerk for Associate Justice Potter Stewart of the United States Supreme Court (1978 - 1979).

Law Clerk for Judge Thomas E. Fairchild, Chief Judge of the Seventh Circuit Court of Appeals (1977 - 1978).

CONSULTING EXPERIENCE

President and Chairman, Compass Lexecon (formerly Lexecon).

AREAS OF SPECIALIZATION

Securities and Financial Markets, Valuation and Financial Analysis, Bankruptcy and Financial Distress Litigation, ERISA Litigation, Class Certification, Damages, Corporate Governance.

PUBLICATIONS

Payback: The Conspiracy to Destroy Michael Milken and His Financial Revolution, Harper Business (1995).

The Economic Structure of Corporate Law, Harvard University Press (1991) (with Frank H. Easterbrook).

ARTICLES

The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: An Update, Briefly... Perspectives on Legislation, Regulation, and Litigation, Vol. 10, No. 3 (National Legal Center for the Public Interest, 2006) (with David J. Ross and Michael A. Keable).

The Hewlett-Packard Merger: A Case Study, in The New Investor Relations, Expert Perspectives on The State Of The Art (Bloomberg Press Princeton, 2004) (with Kenneth R. Cone, Gregory J. Pelnar and David J. Ross).

Market Evidence in Corporate Law, 69 U. Chi. L. Rev. 941 (2002).

Multidisciplinary Practice, The Business Lawyer, Vol. 55, (May 2000).

Government Liability for Breach of Contract, American L. & Econ. Rev. V1 N1/2 313 (1999) (with Alan Sykes).

Lawyers and Confidentiality, 65 U. Chi. L. Rev. 1 (1998).

The Law and Economics of Vanishing Premium Life Insurance, 22 Del. J. Corp. Law 1 (1997) (with Robert S. Stillman).

Clustering and Competition in Asset Markets, 20 J. Law & Econ. 23 (1997) (with Sanford J. Grossman, Merton H. Miller, Kenneth R. Cone and David J. Ross).

Corporate Crime, 25 J. Legal Studies 319 (1996) (with Alan O. Sykes).

The Use of Trading Models to Estimate Aggregate Damages in Securities Fraud Litigation: A Proposal for Change, in Securities Class Actions: Abuses and Remedies (The National Legal Center for the Public Interest, 1994) (with David J. Ross).

Civil Rico After Reves: An Economic Commentary, 1993 Sup. Ct. Rev. 157 (with Alan O. Sykes).

Contract and Fiduciary Duty, 36 J. Law & Econ. 425 (1993) (with Frank H. Easterbrook).

Should the Law Prohibit "Manipulation" in Financial Markets?, 105 Harv. L. Rev. 503 (1991) (with David J. Ross).

Efficient Capital Markets, the Crash, and the Fraud on the Market Theory, 74 Cornell L. Rev. 907 (1989).

The Corporate Contract, 89 Colum. L. Rev. 1416 (1989) (with Frank H. Easterbrook); also published in Corporate Law and Economic Analysis (Cambridge University Press 1990) (Lucian Bebchuk ed.).

The Economics of Lender Liability, 99 Yale L. J. 131 (1989).

Should One Agency Regulate Financial Markets, in Black Monday and the Future of Financial Markets (R. Kormendi, R. Kamphuis & J. W. H. Watson, ed.) (Dow Jones-Irwin Inc., 1988).

ERISA's Fundamental Contradiction: The Exclusive Benefit Rule, 55 U. Chi. L. Rev. 1105 (1988) (with John H. Langbein).

From MITE to CTS: Takeovers, the Williams Act and the Commerce Clause, 1987 Sup. Ct. Rev. 47.

The Regulation of Banks and Bank Holding Companies, 73 Va. L. Rev. 301 (1987) (with Andrew M. Rosenfield and Robert S. Stillman).

The Regulation of Accounting: Some Economic Issues, 52 Brooklyn L. Rev. 1051 (1987).

Organized Exchanges and the Regulation of Dual Class Common Stock, 54 U. Chi. L. Rev. 119 (1987).

Comparable Worth and Discrimination in Labor Markets, 53 U. Chi. L. Rev. 891 (1986) (with Edward P. Lazear).

Comparable Worth: A Rejoinder, 53 U. Chi. L. Rev. 950 (1986) (with Edward P. Lazear).

Close Corporations and Agency Costs, 38 Stan. L. Rev. 271 (1986) (with Frank H. Easterbrook).

The Role of Liability Rules and the Derivative Suit in Corporate Law: A Theoretical and Empirical Analysis, 71 Corn. L. Rev. 261 (1986) (with Michael Bradley).

Regulatory Conflict and Entry Regulation of New Futures Contracts, 59 J. Bus. S85 (1985).

Optimal Damages in Securities Cases, 52 U. Chi. L. Rev. 611 (1985) (with Frank H. Easterbrook).

The Business Judgment Rule and the Trans Union Case, 40 Bus. Law. 1437 (1985).

Insider Trading and Investment Analysts: An Economic Analysis of Dirks v. SEC, 13 Hofstra L. Rev. 127 (1984).

Limited Liability and the Corporation, 52 U. Chi. L. Rev. 89 (1985) (with Frank H. Easterbrook).

Labor Markets and Labor Law Compared with Capital Markets and Corporate Law, 51 U. Chi. L. Rev. 1061 (1984).

Customer Protection in Futures and Securities Markets, 4 J. Futures Markets 273 (1984) (with Sanford J. Grossman).

Mandatory Disclosure and the Protection of Investors, 70 Va. L. Rev. 669 (1984) (with Frank H. Easterbrook).

The Appraisal Remedy In Corporate Law, 1983 Am. Bar Found. Res. J. 875.

The Regulation of Insider Trading, 35 Stan. L. Rev. 857 (1983) (with Dennis W. Carlton).

Voting in Corporate Law, 26 J. Law & Econ. 395 (1983) (with Frank H. Easterbrook).

Auctions and Sunk Costs in Tender Offers, 35 Stan. L. Rev. 1 (1982) (with Frank H. Easterbrook).

The Corporate Governance Movement, 35 Vand. L. Rev. 1259 (1982).

Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities, 38 Bus. Law 1 (1982).

Antitrust Suits By Targets of Tender Offers, 80 Mich. L. Rev. 1155 (May 1982) (with Frank H. Easterbrook).

Corporate Control Transactions, 91 Yale L. J. 698 (1982) (with Frank H. Easterbrook).

The "Race to the Bottom" Revisited: Reflections on Recent Developments in Delaware Corporation Law, 76 Nw. Univ. L. Rev. 913 (1982).

Takeover Bids, Defensive Tactics and Shareholders' Welfare, 36 Bus. Law 1733 (1981) (with Frank H. Easterbrook).

The Law and Economics of Dividend Policy, 67 Va. L. Rev. 699 (1981).

The Proper Role of a Target's Management in Responding to a Tender Offer, 94 Harv. L. Rev. 1161 (1981) (with Frank H. Easterbrook) (awarded prize by Emory University for best paper written in law and economics for the year 1981).

Secondary Liability Under Section 10(b) of the Securities Act of 1934, 69 California L. Rev. 80 (1981).

Efficient Capital Market Theory, the Market for Corporation Control, and the Regulation of Cash Tender Offers, 57 Tex. L. Rev. 1 (1978); reprinted in K. Scott and R. Posner ed., Economic Perspectives on Corporation Law and Securities Regulation (Little Brown 1980).

Antitrust Liability for Attempts to Influence Government Action: The Basis and Limits of the Noerr-Pennington Doctrine, 45 U. Chi. L. Rev. 80 (1977).

Comment, The Demand and Standing Requirements in Stockholder Derivation Actions, 44 U. Chi. L. Rev. 168 (1977).

Comment, The Use of Government Judgments in Private Antitrust Litigation: Clayton Act Section 5(a), Collateral Estoppel, and Jury Trial, 43 U. Chi. L. Rev. 338 (1976).

EDUCATION

University of Chicago Law School, Chicago, Illinois; J.D. 1977, cum laude; Order of the Coif; Comment Editor, Vol. 44, University of Chicago Law Review; Approximately top 1% of the Class. Awarded Casper Platt Award for best paper written by a student of the University of Chicago Law School; awarded Jerome N. Frank Prize for excellence in legal writing while a member of the University of Chicago Law Review, 1975 - 1977. Studied law and economics with Richard Posner and other members of the faculty.

Brown University, Providence, Rhode Island; M.A. 1974 in American History.

Cornell University, Ithaca, New York; major-American History; minor-Economics; B.A. 1972.

TESTIMONY

Deposition of Daniel R. Fischel In Re: Dr. Alan Sacerdote, et al. vs. New York University, In the United States District Court for the Southern District of New York, Civil Action No. 1:16-cv-6284-KBF (March 1, 2018).

Testimony of Daniel R. Fischel In Re: Lehman Brothers Holdings Inc., et al., in the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 08-13555 (SCC) (December 4, 2017).

Deposition of Daniel R. Fischel In Re: Lehman Brothers Holdings Inc., et al., In the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 08-13555 (SCC) (October 17, 2017).

Testimony of Daniel R. Fischel In Re: Genon Energy, Inc., et al, Debtors, In the United States Bankruptcy Court for the Southern District of Texas Houston Division, Chapter 11, Case No. 17-33695 (DRJ) (October 6, 2017).

Deposition of Daniel R. Fischel In Re: Genon Energy, Inc., et al, Debtors, In the United States Bankruptcy Court for the Southern District of Texas Houston Division, Chapter 11, Case No. 17-33695 (DRJ) (August 25, 2017).

Deposition of Daniel R. Fischel In Re: United States ex re. Hendrix et al., vs. JM Manufacturing Company, Inc., et al., In the United States District Court, Central District of California, Case No. ED CV 06-00055-GW (July 20, 2017).

Testimony of Daniel R. Fischel In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Master File No. 2:14-MD-02591-JWL-JPO (June 19, 2017).

Testimony of Daniel R. Fischel In Re: In Re: Motors Liquidation Company, f/k/a General Motors Corporation, et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No.:09-50026 (MG) and Motors Liquidation Company Avoidance Action Trust, et al vs. JPMorgan Chase Bank, N.A., et al., United States Bankruptcy Court, Southern District of New York, Case No.: 09-00504 (MG) (May 2 and 3, 2017).

Deposition of Daniel R. Fischel In Re: Alere-Abbott Merger Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 12963-VCG (April 4, 2017).

Testimony of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (March 20, 2017).

Deposition of Daniel R. Fischel In Re: City of Daytona Beach Policy and Fire Pension Fund, et al vs. Examworks Group, Inc., et al., In the Court of Chancery of the State of Delaware, C.A. No. 12481-VCL (February 22, 2017).

Deposition of Daniel R. Fischel In Re: Appraisal of AOL Inc., In the Court of Chancery of the State of Delaware, Consol C.A. No. 11204-VCG (February 14 and 15, 2017).

Deposition of Daniel R. Fischel In Re: Motors Liquidation Company, f/k/a General Motors Corporation, et al., Debtors, United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No.:09-50026 (MG) and Motors Liquidation Company Avoidance Action Trust, et al vs. JPMorgan Chase Bank, N.A., et al., United States Bankruptcy Court, Southern District of New York, Case No.: 09-00504 (MG) (January 31, 2017).

Deposition of Daniel R. Fischel In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin Fourth Judicial District, Court File No. 27-CV-15-3785 and In Re: Syngenta AG MIR 162 Corn Litigation, In the United States District Court for the District of Kansas, Case No. 2:14-md-2591-JWL-JPO (January 20, 2017).

Testimony of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (October 20, 2016).

Deposition of Daniel R. Fischel in Beaver County Employees Retirement Fund, et al., vs. Cyan, Inc., et al., Superior Court of the State of California, County of San Francisco, Lead Case No. CGC-14-538355 (Consolidated with No. CGC-14-539008) (October 11, 2016).

Deposition of Daniel R. Fischel In Re: Paragon Offshore PLC, et al, Debtors, In the United States Bankruptcy Court, District of Delaware, Case No. 16-10386 (September 23, 2016).

Deposition of Daniel R. Fischel In the Matter of Motiva Enterprises LLC vs. Bechtel Corporation, Jacobs Engineering Group, Inc. and Bechtel-Jacobs CEP Port Arthur Joint Venture, International Institute for Conflict Prevention and Resolution (August 25, 2016).

Deposition of Daniel R. Fischel In Re: Syngenta AG MIR162 Corn Litigation, In the United States District Court for the District of Kansas; Case No. 2:14-MD-02591-JWL-JPO and In Re: Syngenta Litigation, In the State of Minnesota District Court, County of Hennepin, Fourth Judicial District, Case No. 27-CV-15-385 (August 11, 2016).

Deposition of Daniel R. Fischel in The Western and Southern Life Insurance Company vs. The Bank of New York Mellon, Court of Common Pleas, Hamilton County, Ohio, Case No. A 1302490 (July 27, 2016).

Testimony of Daniel R. Fischel in Herbalife, Ltd., vs. KPMG LLP, Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution, CPR Case No. 1100076998 (May 19, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 17, 2016).

Deposition of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 12, 2016).

Testimony of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court for the Northern District of Illinois, Eastern Division, Docket No. 15 C 9196 (May 6, 2016).

Testimony of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (May 4 and 5, 2016).

Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 5, 2016).

Deposition of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. v. Benefit Street Partners LLC, et al., In the District Court of Bexar County, Texas, 285th Judicial District, Cause No. 2016-CI 04006 (April 2, 2016).

Deposition of Daniel R. Fischel in Herbalife Ltd. vs. KPMG LLP, Non-Administered Arbitration of the International Institute for Conflict Prevention and Resolution, CPR Case No. 1100076998 (March 31, 2016).

Deposition of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Igor B. Oystacher and 3 Red Trading, LLC, In the United States District Court, Northern District of Illinois, Eastern Division, No. 15-cv-09196 (March 25, 2016).

Deposition of Daniel R. Fischel in Merion Capital LP and Merion Capital II, LP vs. Lender Processing Services, Inc., In the Court of Chancery of the State of Delaware, C.A. No. 9320-VCL (March 15, 2016).

Deposition of Daniel R. Fischel in Lawrence E. Jaffe Pension Plan, On Behalf of Itself and All Others Similarly Situated v. Household International, Inc., et al., In the United States District Court, Northern District of Illinois Eastern Division, Lead Case No. 02-C-5893 (February 24, 2016).

Deposition of Daniel R. Fischel in Robert E. Morley, Jr. and REM Holdings 3, LLC vs. Square, Inc., Jack Dorsey, and James McKelvey, Jr., United States District Court for the Eastern District of Missouri, Eastern Division, Civil Action No. 14-CV-00172-SNLJ (February 19, 2016).

Testimony of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, et al., Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (January 20 and 21, 2016).

Testimony of Daniel R. Fischel in Sangeeth Peruri v. Ameriprise Financial, Inc., et al, American Arbitration Association Case No. 01-15-0002-3991 (December 7, 2015).

Deposition of Daniel R. Fischel In the Matter of the Application of U.S. Bank National Association, The Bank of New York Mellon, The Bank of New York Mellon Trust Company, N.A., et al, In the Supreme Court of the State of New York, County of New York, Index No. 652382/2014 (December 3, 2015).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Arkadiy Dubovoy, et al, In the United States District Court for the District of New Jersey, Civil Case No. 15-cv-6076-MCA (October 8, 2015).

Deposition of Daniel R. Fischel in Steven A. Stender, Harold Silver and Infinity Clark Street Operating, L.L.C., on behalf of themselves and all others similarly situated v. Archstone-Smith Operating Trust, et al., in the United States District Court for the District of Colorado, Case No. 07-CV-02503-WJM-MJW (July 24, 2015).

Testimony of Daniel R. Fischel In Re: Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web IV), in the United States Copyright Royalty Judges, The Library of Congress, Docket No. 14-CRB-0001-WR (2016-2020) (May 21 and 22, 2015).

Deposition of Daniel R. Fischel In Re: Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (Web IV), in the United States Copyright Royalty Judges, The Library of Congress, Docket No. 14-CRB-0001-WR (2016-2020) (April 1, 2015).

Deposition of Daniel R. Fischel in MacDermid, Incorporated vs. Cookson Group, PLC, Cookson Electronics and Enthone, Inc., in the Superior Court, Judicial District of Waterbury, Docket No. UWY-CV-12-6016356-S (January 21, 2015)

Testimony of Daniel R. Fischel in the Securities and Exchange Commission vs. Samuel E. Wyly and Donald R. Miller, Jr., in his capacity as the Independent Executor of the Will and Estate of Charles J. Wyly, Jr., in the United States District Court, Southern District of New York, 10 Civ. 5760 (SAS) (November 17, 2014).

Deposition of Daniel R. Fischel In Re: Activision Blizzard, Inc. Stockholder Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 8885-VCL (October 17, 2014).

Testimony of Daniel R. Fischel in Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales, Inc. v. A.T. Massey Coal Company, Inc., In the Circuit Court for Buchanan County, Case No. 027CL10000771-00 (May 20 and 21, 2014).

Deposition of Daniel R. Fischel in Center Partners, Ltd., et al v. Urban Shopping Centers, L.P., et al., In the Circuit Court of Cook County, Illinois, County Department, Law Division, Case No. 04 L 012194 (April 24, 2014).

Deposition of Daniel R. Fischel in Third Point LLC v. William F. Ruprecht, et al and Sotheby's, In the Court of Chancery of the State of Delaware, C.A. No. 9469-VCP (April 19, 2014).

Deposition of Daniel R. Fischel in Hugh M. Caperton, Harman Development Corporation, Harman Mining Corporation, and Sovereign Coal Sales, Inc. v. A.T. Massey Coal Company, Inc., In the Circuit Court for Buchanan County, Case No. 027CL10000771-00 (March 14, 2014).

Deposition of Daniel R. Fischel in Corre Opportunities Fund, LP, Zazove Associates LLC, DJD Group LLLP, First Derivative Traders LP, and Kevan A. Fight vs. Emmis Communications Corporation, United States District Court, Southern District of Indiana, Indianapolis Division, Case No. 1:12-cv-0491-SEB-TAB (October 4, 2013).

Testimony of Daniel R. Fischel In the Matter of the Application of The Bank of New York Mellon, (As Trustee Under Various Pooling and Servicing Agreements and Indenture Trustee under various indentures), Petitioner, for an order, pursuant to CPLR §7701, seeking judicial instructions and approval of a proposed settlement, Index No. 651786/11, Supreme Court of the State of New York, County of New York: Trial Term Part 39 (September 9 and 10, 2013).

Testimony of Daniel R. Fischel In Re: September 11 Litigation, Case No. 21 MC 97 (AKH), United States District Court for the Southern District of New York, (July 16, 2013)

Deposition of Daniel R. Fischel in Cantor Fitzgerald & Co., et al v. American Airlines, Inc., et al, Case No. 21 MC 101 (AKH), 04 CV 7318 (AKH), United States District Court, Southern District of New York (July 1, 2013).

Deposition of Daniel R. Fischel In Re: Pfizer Inc. Securities Litigation, Case No. 04 Civ. 9866 (RO) In The United States District Court for the Southern District of New York (June 28, 2013).

Testimony of Daniel R. Fischel in William T. Esrey, Julie C. Esrey, Ronald T. LeMay and Casondra C. Lemay v. Ernst & Young LLP Arbitration, Case No. 13 107 Y 02332 11 (May 29, 2013).

Deposition of Daniel R. Fischel in Christine Bauer-Ramazani and Carolyn B. Duffy, on behalf of themselves and all other similarly situated v. Teachers Insurance and Annuity Association of America – College Retirement and Equities Fund (TIAA-CREF), et al, in the United States District Court, District of Vermont, Docket No. 1:09-cv-190 (May 21, 2013).

Deposition of Daniel R. Fischel In Re: Google Inc. Class C Shareholder Litigation, In the Court of Chancery of the State of Delaware, Case No. 7469CS (May 17, 2013).

Deposition of Daniel R. Fischel In the Matter of the application of The Bank of New York Mellon (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various Indentures), et al., Supreme Court of the State of New York, County of New York, Index No. 651786/2011 (May 9, 2013).

Deposition of Daniel R. Fischel in William T. Esrey, Julie C. Esrey, Ronald T. Lemay, and Casondra C. Lemay v. Ernst & Young, L.L.P., Before the American Arbitration Association, Case No. 1234 (May 7, 2013).

Deposition of Daniel R. Fischel in Archer Well Company, Inc. v. GW Holdings LLC and Wexford Capital LP, in the United States District Court, Southern District of New York, ECF Case No. 1 1:12-cv-06762-JSR (April 5, 2013).

Testimony of Daniel R. Fischel in Meso Scale Diagnostics, LLC , Meso Scale Technologies, LLC v. Roche Diagnostics GmbH, et al., In the Court of Chancery of the State of Delaware, Civil Action No. 5589-VCP (February 27, 2013).

Deposition of Daniel R. Fischel in Center Partners, Ltd. et al v. Urban Shopping Centers, L.P., et al, Circuit Court of Cook County, Illinois, No. 04 L 012194 (February 6 and 7, 2013).

Deposition of Daniel R. Fischel In Re: September 11 Litigation, United States District Court, Southern District of New York, Civil Action No. 21 MC 101 (AKH) (January 11, 2013).

Deposition of Daniel R. Fischel in Meso Scale Diagnostics, LLC, Meso Scale Technologies, LLC v. Roche Diagnostics GmbH, et al., In the Court of Chancery of the State of Delaware, Case No: 5589-VCP (November 12, 2012).

Testimony of Daniel R. Fischel in Stuart Bederman, et al. v. Archstone, f/k/a Archstone-Smith Operating Trust, Arbitration before the Honorable Bruce W. Kauffman (October 17, 2012).

Deposition of Daniel R. Fischel in David E. Brown, et al. v. Authentec, Inc. et al., In the Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Civil Division, Case No. 05-2012-CA-57589 (September 18, 2012).

Deposition of Daniel R. Fischel in Stuart Bederman, et al. v. Archstone, f/k/a Archstone-Smith Operating Trust, Arbitration before the Honorable Bruce W. Kauffman (September 14, 2012).

Testimony of Daniel R. Fischel in Tronox, Incorporated, et al., v. Kerr-McGee Corporation, et al., United States Bankruptcy Court, Southern District of New York, Adversary Proceeding No. 09-10098(ALG) (August 7, 8 and 9, 2012).

Deposition of Daniel R. Fischel In re McAfee, Inc. Shareholder Litigation, Superior Court of the State of California, County of Santa Clara, Lead Case No. 1:10-cv-180413 (August 2, 2012).

Testimony of Daniel R. Fischel in Kraft Foods Global, Inc., v. Starbucks Corporation, Arbitration Before JAMS, Arbitration No. 1340008345 (July 31, 2012).

Deposition of Daniel R. Fischel in Altana Pharma AG, and Wyeth v. Teva Pharmaceuticals USA, Inc. and Teva Pharmaceutical Industries, Ltd., In the United States District Court, District of New Jersey, Consolidated Civil Action Nos. 04-2355 (JLL)(CCC), 05-1966 (JLL)(CCC), 05-3920 (JLL)(CCC) and 05-3672 (JLL)(CCC) (June 1, 2012).

Deposition of Daniel R. Fischel in Kraft Foods Global, Inc. v. Starbucks Corporation, Arbitration before JAMS, Arbitration No. 1340008345 (May 15, 2012).

Deposition of Daniel R. Fischel in Capital One Financial Corporation v. John A. Kanas and John Bohlsen, In the United States District Court for the Eastern District of Virginia, Alexandria Division, Civil Action No. 1:11-cv-750 (LO/TRJ) (May 10, 2012).

Deposition of Daniel R. Fischel In Re: Pfizer Inc. Securities Litigation, In the United States District Court, Southern District of New York, Case 1:04-cv-09866-LTS-HBP (May 3, 2012).

Deposition of Daniel R. Fischel in Willie R. Pittman, Susan B. Seales and Stephen T. Selzer vs. J. Coley Clark, Moneygram International, Inc., et al., In the Court of Chancery of the State of Delaware, C.A. No. 6387-VCL (April 26, 2012).

Deposition of Daniel R. Fischel in Chona Allison, et al v. CRC Insurance Services, Inc., In the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 10-3313 (March 14 and 15, 2012).

Deposition of Daniel R. Fischel In Re: Tronox Incorporated, et al., Debtors, In the United States Bankruptcy Court, Southern District of New York, Chapter 11, Case No. 09-10156 (ALG) (February 24, 2012).

Testimony of Daniel R. Fischel In Re: BankAtlantic Bancorp, Inc. Litigation, In the Court of Chancery of the State of Delaware, Consolidated Civil Action No. 7068-VCL (January 27 and 30, 2012).

Deposition of Daniel R. Fischel in Hildene Capital Management, LLC et al v. BankAtlantic Bancorp, Inc., et al, In the Court of Chancery of the State of Delaware, C.A. No. 7068-VCL (January 19, 2012).

Deposition of Daniel R. Fischel in Advanced Analogic Technologies, Incorporated v. Skyworks Solutions, Inc. and Powerco Acquisition Corp., In the Court of Chancery of the State of Delaware, Arbitration No. 005-A-CS (November 18, 2011).

Testimony of Daniel R. Fischel in Prudential Retirement Insurance and Annuity Company v. State Street Bank and Trust Company and State Street Global Advisors, Inc., United States District Court, Southern District of New York, Case No. 07-CV-8488 (October 13, 2011).

Deposition of Daniel R. Fischel In re: Inkeepers USA Trust, et al v. Cerberus Series Four Holdings, LLC, et al, United States Bankruptcy Court, Southern District of New York, Case No. 10-13800 (SCC) (October 5, 2011).

Deposition of Daniel R. Fischel in Mary K. Jones, et al v. Pfizer, Inc., et al, United States District Court, Southern District of New York, Civil Action No. 10-cv-03864 (AKH) ECF (October 4, 2011).

Testimony of Daniel R. Fischel in Marina Del Rey Country Club Apartments, et al. vs. Archstone and Archstone Multifamily Series I Trust, Ruby/Archstone Arbitration (August 30, 2011).

Deposition of Daniel R. Fischel in Maher Terminals, LLC v. The Port Authority of New York and New Jersey, Before the Federal Maritime Commission, FMC Docket No. 08-03 (August 25, 2011).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Joseph P. Nacchio, Robert S. Woodruff, Afshin Mohebbi, James J. Kozlowski and Frank T. Noyes, United States District Court for the District of Colorado, Civil Action No. 05-cv-480-MSK-CBS (August 16, 2011).

Affidavit of Daniel R. Fischel in Glenhill Capital LP, et al v. Porsche Automobil Holding, SE, f/k/a Dr. Ing. h.c. F. Porsche AG, Supreme Court of the State of New York, County of New York, Index Number 650678/2011 (August 15, 2011).

Deposition of Daniel R. Fischel in Fairfax Financial Holdings Limited and Crum & Forster Holdings Corp. v. S.A.C. Capital Management, LLC, et al., Superior Court of New Jersey, Law Division: Morris County, Docket No. MRS-L-2032-06 (July 27, 2011).

Deposition of Daniel R. Fischel In re: Lyondell Chemical Company, et al v. Leonard Blavatnik, et al., United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 09-10023 – (REG) (Jointly Administered) (July 25, 2011).

Deposition of Daniel R. Fischel In Re Constar Int'l Inc. Securities Litigation, United States District Court, Eastern District of Pennsylvania, Master File No. 03cv05020 (June 28, 2011).

Affidavit of Daniel R. Fischel In Re Massey Energy Co. Derivative and Class Action Litigation, In The Court of Chancery of the State of Delaware, C.A. No. 5430-VCS (May 20, 2011).

Deposition of Daniel R. Fischel in Marina Del Rey Country Club, et al v. Archstone and Archstone Multifamily Series I Trust, Ruby/Archstone Arbitration (May 9, 2011).

Testimony of Daniel R. Fischel in The Dow Chemical Company v. Petrochemical Industries Company (K.S.C.), International Chamber of Commerce, International Court of Arbitration, ICC Case No. 16127/JEM/MLK (April 7, 2011).

Testimony of Daniel R. Fischel In Re: Tribune Company, et al., Debtors, In the United States Bankruptcy Court for the District of Delaware, Chapter 11, Case No. 08-13141 (KJC) (March 10, 2011).

Deposition of Daniel R. Fischel In Re: Tribune Company, et al., Debtors, In the United States Bankruptcy Court for the District of Delaware, Chapter 11, Case No. 08-13141 (KJC) (March 2, 2011).

Deposition of Daniel F. Fischel In Re: Genetically Modified Rice Litigation, In the United States District Court for the Eastern District of Missouri, Eastern Division, Case No. 4:06 MD 1811 CDP (February 15, 2011).

Deposition of Daniel R. Fischel in Riceland Food, Inc. v. Bayer Cropscience LP, et al, In the United States District Court, Eastern District of Missouri, Eastern Division, Case No. 4:09-cv-00433 CDP (January 18, 2011).

Deposition of Daniel R. Fischel In Re: Genetically-Modified Rice Litigation, In the United States District Court for the Eastern District of Missouri, Case No. 4:06-MD-1811 (November 11, 12, 2010).

Deposition of Daniel R. Fischel in Coleen Witmer, Individually, and on Behalf of All Others Similarly Situated v. Dynegy Inc., In the District Court of Harris County, Texas, 234th Judicial District (November 6, 2010).

Testimony of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (November 2, 2010).

Testimony of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (October 22, 2010).

Testimony of Daniel R. Fischel in Air Products and Chemicals, Inc. v. Airgas, Inc., Peter McCausland, et al, In the Court of Chancery of the State of Delaware, C.A. No. 5249-CC (October 5, 2010).

Deposition of Daniel R. Fischel in Air Products and Chemicals, Inc. v. Airgas, Inc., Peter McCausland, et al, In the Court of Chancery of the State of Delaware, C.A. No. 5249-CC (September 8, 2010).

Deposition of Daniel R. Fischel in Terra Firma (GP) 2 Investments Limited v. Citigroup Inc., United States District Court for the Southern District of New York, No. 1:09-CV-10459 (JSR) (July 28, 2010).

Deposition of Daniel R. Fischel in Citadel Investment Group, L.L.C. et al v. Mikhail Malyshev and Jace Kohlmeier, In the American Arbitration Association, Case No. AAA No. 51 166 00969 09 (July 13, 2010).

Testimony of Daniel R. Fischel In Re: United States of America v. Joseph P. Nacchio, in the United States District Court for the District of Colorado, Case No. 05-CR-00545-EWN (June 23, 2010).

Deposition of Daniel R. Fischel in Cantor Fitzgerald Securities, Cantor Fitzgerald & Co., Cantor Fitzgerald Partners v. The Port Authority of New York and New Jersey, in the Supreme Court of the State of New York, County of New York, Case No. 105447/94 (June 4, 2010).

Deposition of Daniel R. Fischel in Alaska Retirement Management Board on behalf of State of Alaska Public Employees' Retirement System and State of Alaska Teachers' Retirement System v. Mercer (US), Inc., Mercer Human Resources Consulting, Inc., and William M. Mercer, Inc., in The Superior Court for the State of Alaska, First Judicial District at Juneau, Case No. 1JU-07-974CI (April 29, 2010).

Deposition of Daniel R. Fischel In Re: ACS Shareholders Litigation, in The Court of Chancery of the State of Delaware, Consolidated Case No. 4940-VCP (April 26, 2010).

Testimony of Daniel R. Fischel in Securities and Exchange Commission v. Carl W. Jasper, in the United States District Court for the Northern District of California, San Jose Division, Case No. C-07-06122-JW (April 16, 2010).

Deposition of Daniel R. Fischel in Prudential Retirement Insurance and Annuity Company v. State Street Bank and Trust Company and State Street Global Advisors, Inc., in the United States District Court, Southern District of New York, Case No. 07 CIV 8488 (April 9, 2010).

Deposition of Daniel R. Fischel In re: Lyondell Chemical Company, et al., Debtors. Official Committee of Unsecured Creditors, on behalf of the Debtors' Estates v. Citibank, N.A., et al., in the United States Bankruptcy Court, Southern District of New York, Chapter 11 Case No. 09-10023 – (RED) (December 2, 2009).

Deposition of Daniel R. Fischel in Securities and Exchange Commission v. Carl W. Jasper, In the United States District Court, Northern District of California, San Jose Division, Case No. CV 07-6122 (HRL) (October 22, 2009).

Testimony of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In the United States District Court of the Western District of Kentucky at Louisville, Civil Action No. 3:07-cv-00238-JGH (September 2, 2009).

Deposition of Daniel R. Fischel in Frank K. Cooper Real Estate #1, Inc., et al vs. Cendant Corporation f/k/a Hospitality Franchise Systems and Century 21 Real Estate Corporation, Superior Court of New Jersey, Law Division: Morris County, Docket No. MRS-L-377-02 (August 10, 2009).

Deposition of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In the United States District Court of the Western District of Kentucky at Louisville, Civil Action No. 3:07-cv-00238-JGH (August 3, 2009).

Deposition of Daniel R. Fischel in U.S. Commodity Futures Trading Commission v. Amaranth Advisors, L.L.C., Amaranth Advisors (Calgary) and Brian Hunter, in the United States District Court, Southern District of New York, Case No. 07 CIV 6682 (July 8, 2009).

Declaration and Expert Surrebutal Report of Daniel R. Fischel in Ventas, Inc. v. HCP, Inc., In The United States District Court for the Western District of Kentucky at Louisville, Case No. 3:07-CV-00238-JGH (June 22, 2009).

Testimony of Daniel R. Fischel in NRG Energy, Inc. v. Exelon Corporation and Exelon Exchange Corporation, in the United States District Court, Southern District of New York, Case No. 09-CV-2448 (JGK) (DFE), (June 3, 2009).

Deposition of Daniel R. Fischel In Re: Delphi Corporation v. Appaloosa Management L.P., et al., In the United States Bankruptcy Court, Southern District of New York; Chapter 11, Case No. 05-44481(RDD) (Jointly administered), (June 2, 2009).

Deposition of Daniel R. Fischel in NRG Energy, Inc. v. Exelon Corporation and Exelon Exchange Corporation, in the United States District Court, Southern District of New York, Case No. 09-CV-2448 (JGK) (DFE), (May 31, 2009).

Deposition of Daniel R. Fischel in e-Bay Domestic Holdings, Inc. v. Craig Newmark and James Buckmaster and Craigslist, Inc., in the Court of Chancery of the State of Delaware, Case No. 3705-CC (May 29, 2009)

Testimony of Daniel R. Fischel In Re: Lawrence E. Jaffe Pension Plan, et al v. Household International, Inc., et al, in the United States District Court for the Northern District of Illinois, Eastern Division, No. 02-C-5893 (April 16, 20, 28 and 29, 2009).

Deposition of Daniel R. Fischel In Re: Rohm and Haas Company v. The Dow Chemical Company and Ramses Acquisition Corp., In the Court of Chancery of the State of Delaware, C.A. No. 4309-CC (March 4, 2009).

Deposition of Daniel R. Fischel In the Matter of Hoffman, et al. v. American Express Travel Related Services Company, Inc., et al., in the Superior Court of the State of California, in and for the County of Alameda, Case No. 2001-022881 (January 15, 2009).

Deposition of Daniel R. Fischel In Re: TyCom Ltd. Securities Litigation, in the United States District Court, District of New Hampshire, Docket No. 03-CV-1352 (September 22, 2008).

Deposition of Daniel R. Fischel In Re: Hexion Specialty Chemicals, Inc., et al v. Huntsman Corp., in the Court of Chancery of the State of Delaware, Civil Action No. 3841-VCL (September 4, 2008).

Deposition of Daniel R. Fischel In Re: Stone Energy Corp. Securities Litigation, in the United States District Court, Western District of Louisiana, Lafayette-Opelousas Division, Civil Action No. 6:05CV2088 (LEAD) (July 16, 2008).

Deposition of Daniel R. Fischel In Re: Initial Public Offering Securities Litigation, in the United States District Court, Southern District of New York, Master File No. 21 MC 92 (SAS) (April 3 and 4, 2008).

Deposition of Daniel R. Fischel In Re: Lawrence E. Jaffe Pension Plan, et al v. Household International, Inc., et al, in the United States District Court for the Northern District of Illinois, Eastern Division, No. 02-C-5893 (March 21, 2008).

Deposition of Daniel R. Fischel In Re: IAC/InteractiveCorp and Barry Diller v. Liberty Media Corporation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated Case Number 3486-VCL (February 29, 2008).

Testimony of Daniel R. Fischel In Re: Immunicon Corporation v. Veridex LLC, before the American Arbitration Association (Commercial Arbitration Rules), Case Number 50 180T 00192 07 (January 17, 2008).

Deposition of Daniel R. Fischel In Re: Unitedglobalcom Shareholders Litigation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated C.A. No. 1012-N (November 19, 2007).

Deposition of Daniel R. Fischel In Re: Cendant Corporation Litigation, in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (November 15, 2007).

Deposition of Daniel R. Fischel In Re: Cendant Corporation Litigation, in the United States District Court for the District of New Jersey, Master File No. 98-1664 (WHW) (October 16, 2007).

Deposition of Daniel R. Fischel In Re Schering-Plough Corporation Securities Litigation, in the United States District Court for the District of New Jersey, Master File No. 01-CV-0829 (KSH/RJH) (October 12, 2007).

Deposition of Daniel R. Fischel In Re: Carpenters Health & Welfare Fund, et al. vs. The Coca-Cola Company, in the United States District Court, Northern District of Georgia, Atlanta Division, File No. 1:00-CV-2838-WBH (Consolidated) (September 26, 2007).

Deposition of Daniel R. Fischel In Re: Parker Freeland, et al., vs. Iridium World Communications, Ltd., et al., in the United States District Court for the District of Columbia, Civil Action No. 99-1002 (August 7, 2007).

Deposition of Daniel R. Fischel In Re: Chuck Ginsburg v. Philadelphia Stock Exchange, Inc., et al., In the Court of Chancery of the State of Delaware in and for New Castle County, C.A. No. 2202-N (June 12, 2007).

Testimony of Daniel R. Fischel In Re: Holcombe T. Green and HTG Corp. v. McKesson, Inc., et al, In the Superior Court for the County of Fulton, State of Georgia, Civil Action File No. 2002-CV-48407 (June 5, 2007).

Affidavit of Daniel R. Fischel In Re: Lear Corporation Shareholders Litigation, In the Court of Chancery of the State of Delaware, Consolidated C.A. No. 2728-VCS (May 30, 2007).

Affidavit of Daniel R. Fischel In Re: Aeroflex, Inc. Shareholder Litigation, in the Supreme Court of the State of New York, County of Nassau: Commercial Division, Index No. 07-003943 (May 23, 2007).

Deposition of Daniel R. Fischel In Re: Holcombe T. Green and HTG Corp. v. McKesson, Inc., HBO & Company, Albert Bergonzi, and Jay Gilbertson, in the Superior Court for the County of Fulton, State of Georgia, Civil Action File No. 2002W48407 (May 21, 2007).

Deposition of Daniel R. Fischel In Re: Adelphia Communications Corp. v. Deloitte & Touche LLP, et al, in the Court of Common Pleas, Philadelphia County, Pennsylvania, Case No. 000598 (May 3 and 4, 2007).

Testimony of Daniel R. Fischel In Re: United States of America v. Joseph P. Nacchio, in the United States District Court for the District of Colorado, Case No. 05-CR-00545-EWN (April 9, 2007).

Deposition of Daniel R. Fischel In Re: MK Resources Company Shareholders Litigation, in the Court of Chancery for the State of Delaware in and for New Castle County, C.A. No. 1692-N (February 22, 2007).

Deposition of Daniel R. Fischel In Re: Starr International Company, Inc. v. American International Group, Inc., In the United States District Court, Southern District of New York, Case No. 05 CV 6283 (January 26, 2007).

Written testimony of Daniel R. Fischel In Re: Verizon Communications Inc. and Verizon Services Corp. v. Christopher G. Pizzirani, In the United States District Court for the Eastern District of Pennsylvania, Case No. 2:06-cv-04645-MK (November 6, 2006).

Testimony of Daniel R. Fischel In Re: Northeast Savings, F.A. v. United States of America, In The United States Claims Court, Case No. 92-550 C (November 2 and 9, 2006).

Testimony of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (October 25, 2006).

Affidavit of Daniel R. Fischel In Re: Lionel I. Brazen and Nancy Hammerslough, et al v. Tyco International Ltd., et al, In the Circuit Court of Cook County, Illinois County Department, Chancery Division, No. 02 CH 11837 (September 18, 2006).

Deposition of Daniel R. Fischel In Re: Tele-Communications, Inc. Shareholders Litigation, in the Court of Chancery of the State of Delaware in and for New Castle County, Consolidated C.A. No. 16470 (September 15, 2006).

Affidavit of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (September 8, 2006).

Deposition of Daniel R. Fischel In Re: James Gilbert v. McKesson Corporation, et al., in the State Court of Fulton County, State of Georgia, Civil Action File No. 02VS032502C (September 7, 2006).

Supplemental Declaration of Daniel R. Fischel In Re: United States of America v. Jeffrey K. Skilling, in the United States District Court, Southern District of Texas, Houston Division, Crim. No. H-04-25 (Lake, J.) (August 25, 2006).

Affidavit of Daniel R. Fischel In Re: United States of America v. Sanjay Kumar and Stephen Richards, United States District Court, Eastern District of New York, 04 Civ. 4104 (ILG) (August 22, 2006).

Declaration of Daniel R. Fischel In Re: United States of America v. Jeffrey K. Skilling, in the United States District Court, Southern District of Texas, Houston Division, Crim. No. H-04-25 (Lake, J.) (August 3, 2006).

Deposition of Daniel R. Fischel In Re: Enron Corporation Securities Litigation, in the United States District Court, Southern District of Texas, Houston Division, Case Number: H-01-3624 (May 24, 2006).

Testimony of Daniel R. Fischel In Re: Guidant Corporation Shareholders Derivative Litigation, in the United States District Court, Southern District of Indiana, Indianapolis Division, Master Derivative Docket No. 1:03-CV-955-SEB-WTL (January 20, 2006).

Testimony of Daniel R. Fischel In Re. Hideji Jumbo Tanaka v. Cerberus Far East Management, L.L.C., et al., AAA Case No. 50 T 116 00284 03, (December 15, 2005).

Deposition of Daniel R. Fischel In Re: McKesson HBOC, Inc. Securities Litigation, in the United States District Court for the Northern District of California, No. C-99-20743-RMW (August 16, 2005).

Testimony of Daniel R. Fischel In the Matter of Visconsi Companies Ltd., et al. and Lehman Brothers, et al., National Association of Securities Dealers Department of Arbitration, Grievance No. 03-07606 (July 26, 2005).

Testimony of Daniel R. Fischel in re: John P. Crowley, as Receiver of Ambassador Insurance Company v. Doris June Chait, et al., in the United States District Court for the District of New Jersey, Case No. 85-2441 (HAA) (July 21 and 22, 2005).

Deposition of Daniel R. Fischel In re: Electronic Data Systems Corporation Securities Litigation, in the United States District Court for the Eastern District of Texas, Tyler Division, Case No. 6:03-MD-1512 (July 20, 2005).

Testimony of Daniel R. Fischel in re: United States of America v. Philip Morris, Inc., et al, in the United States District Court for the District of Columbia, Case No. 1:99CV02496 (May 26 and 27, 2005).

Deposition of Daniel R. Fischel in re: Cordis Corporation v. Boston Scientific Corporation, et ano, in the United States District Court for the District of Delaware, Case No. 03-027-SLR (May 25, 2005).

Deposition of Daniel R. Fischel in re: United States of America v. Philip Morris, Inc., et al, in the United States District Court for the District of Columbia, Case No. 1:99CV02496 (May 16, 2005).

Testimony of Daniel R. Fischel in re: Drury Industries, Inc. v. Drury Properties, Inc., in the First Judicial District Court of the State of Nevada in and for Carson City, Nevada (April 6 and 7, 2005).

Deposition of Daniel R. Fischel in re: Jerry R. Summers and George T. Lenormand, et al v. UAL Corporation ESOP Committee, Marty Torres, Barry Wilson, Doug Walsh, Ira Levy, Don Clements, Craig Musa, and State Street Bank and Trust Company, in the United States District Court for the North District of Illinois, Eastern Division, No. 03 C 1537 (March 9, 2005).

Deposition of Daniel R. Fischel in re: Drury Industries, Inc. v. Drury Properties, Inc., in the First Judicial District Court of the State of Nevada in and for Carson City, Nevada (March 7 and 10, 2005).

Testimony of Daniel R. Fischel In the Matter of Fyffes PLC v. DCC PLC, S&L Investments Limited, James Flavin and Lotus Green Limited, in The High Court, Dublin, Ireland (2002 No. 1183P) (February 1 and 2, 2005).

Deposition of Daniel R. Fischel In the Matter of the Arbitration between The Canada Life Assurance Company and The Guardian Life Insurance Company of America (January 12, 2005).

Deposition of Daniel R. Fischel In Re: IDT Corporation vs. Telefonica, S.A., et al, in the United States District Court, District of New Jersey, Civil Action No. 01-CV 471 (December 14, 2004).

Deposition of Daniel R. Fischel In Re: DQE, Inc. Securities Litigation, in the United States District Court, Western District of Pennsylvania, Master File No. 01-1851 (December 7, 2004)

Testimony of Daniel R. Fischel In Re United States of America v. Daniel Bayly, James A Brown, Robert S. Furst, Daniel O. Boyle, William R. Fuhs and Sheila K. Kahanek, in the United States District Court of Southern Texas Houston Division, Case No. H-CR-03-363 (November 4, 2004).

Testimony of Daniel R. Fischel In the Matter of the Arbitration Between The Canada Life Assurance Company, Petitioner v. Caisse Centrale De Reassurance, Respondent, (November 2, 2004).

Testimony of Daniel R. Fischel In Re Yankee Atomic Electric Company, Connecticut Yankee Atomic Power Company, and Maine Yankee Atomic Power Company v. The United States, in the United States Court of Federal Claims, Case Nos. 98-126C, 98-154C and 98-474C (August 9, 2004).

Affidavit of Daniel R. Fischel In Re Oracle Corp. Derivative Litigation, in the Court of the Chancery of the State of Delaware In and For New Castle County, Consolidated Civil Action No. 18751 (June 8, 2004).

Deposition of Daniel R. Fischel in re: Reading International, Inc., et al v. Regal Entertainment Group, et al, (Delaware Chancery Court) (May 30, 2004) .

Affidavit of Daniel R. Fischel in re: Reading International, Inc., et al v. Regal Entertainment Group, et al, (Delaware Chancery Court) (May 28, 2004) .

Deposition of Daniel R. Fischel in re: Northeast Savings, F.A. v. United States of America, in the United States Claims Court, Case No. 92-550-C (May 4, 5 and 6, 2004).

Deposition of Daniel R. Fischel in re: Tyson Foods, Inc. Securities Litigation, in the United States District Court for the District of Delaware, Civil Action No. 01-425-SLR (March 18, 2004).

Testimony of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (March 4, 2004).

Testimony of Daniel R. Fischel in Tracinda Corporation v. DaimlerChrysler AG, et al, in the United States District Court for the District of Delaware, Civil Action No. 00-984 (February 11, 2004).

Deposition of Daniel R. Fischel in Gerald K. Smith, as Plan Trustee for and on behalf of the Estates of Boston Chicken, Inc., et al. v. Arthur Anderson LLP, et al., in the United States District Court for the Northern District of Illinois, Case Nos. CIV-01-218-PHX-PGR, CIV-01-246-PHX-EHC, CIV-02-1162-PHX-PGR, CIV-02-1248-PHX-PGR (Consolidated) (October 29 and 30, 2003).

Deposition of Daniel R. Fischel in Irene Abrams, on behalf of herself and all others similarly situated v. Van Kampen Funds, Inc., Van Kampen Investment Advisory Corp., Van Kampen Prime Rate Income Trust, Howard Tiffen, Richard F. Powers III, Stephen L. Boyd, Dennis J. McDonnell and Jeffrey W. Maillet, in the United States District Court for the Northern District of Illinois, Eastern Division, Case No. 01-C-7538 (October 21, 2003).

Deposition of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (October 13, 2003).

Testimony of Daniel R. Fischel in Transcore Holdings, Inc. v. Rocky Mountain Mezzanine Fund II, LP; Hanifen Imhoff Mezzanine Fund, LP; Moramerica Capital Corporation; and NDSBIC, LP and W. Trent Ates and Fred H. Rayner, In Re: Jams Arbitration, Case No. 1410003193 (September 24, 2003).

Deposition of Daniel R. Fischel in Transcore Holdings, Inc. v. Rocky Mountain Mezzanine Fund II, LP; Hanifen Imhoff Mezzanine Fund, LP; Moramerica Capital Corporation; and NDSBIC, LP and W. Trent Ates and Fred H. Rayner, In Re: Jams Arbitration, Case No. 1410003193 (May 13, 2003).

Deposition of Daniel R. Fischel in AT&T Broadband Management Corporation v. CSG Systems, Inc., American Arbitration Association No. 77 181 00159 02 VSS (April 9, 2003).

Deposition of Daniel R. Fischel In Re: DaimlerChrysler AG Securities Litigation, in the United States District Court for the District of Delaware, Civil Action No. 00-993-JJF (February 11 and 12, 2003).

Deposition of Daniel R. Fischel in David T. Bard, Commissioner of Banking and Insurance for the State of Vermont, as Receiver for Ambassador Insurance Company v. Arnold Chait, et al, in the United States District Court for the District of New Jersey, Civil Action No. 85-2441 (December 12, 2002).

Testimony of Daniel R. Fischel in MHC Financing Limited Partnership, et al vs. City of San Rafael, et al, in the United States District Court, Northern District of California, Case No. C 00-3785 VRW (November 6, 2002).

Deposition of Daniel R. Fischel in MHC Financing Limited Partnership, et al vs. City of San Rafael, et al, in the United States District Court, Northern District of California, Case No. C 00-3785 VRW (October 16, 2002).

Deposition of Daniel R. Fischel in Maine Yankee Atomic Power Company v. United States of America, In the United States Court of Federal Claims, Case No. 98-474 C (October 8 and 9, 2002).

Testimony of Daniel R. Fischel in California Federal Bank, FSB v. The United States of America, In the United States Court of Federal Claims, Case No. 92-138C (September 20 and 23, 2002).

Deposition of Daniel R. Fischel in Maine Yankee Atomic Power Company v. United States of America, In the United States Court of Federal Claims, Case No. 98-474 C (September 4 and 6, 2002).

Deposition of Daniel R. Fischel In the Matter of RDM Sports Group, Inc., et al v. Smith, Gambrell, Russell, L.L.P.; et al, In the United States Bankruptcy Court for the Northern District of Georgia, Newnan Division, Case No. 00-1065 (May 14 and 15, 2002).

Deposition of Daniel R. Fischel in Walter B. Hewlett, individually and as Trustee of the William R. Hewlett Revocable Trust, and Edwin E. van Bronkhorst as Co-Trustee of the William R. Hewlett Revocable Trust v. Hewlett-Packard Company, in the Court of the Chancery of the State of Delaware in and for New Castle County (April 24, 2002).

Deposition of Daniel R. Fischel in California Federal Bank, FSB, v. The United States of America, in the United States District Court of Federal Claims, Case No. 92-138C (April 16 and 17, 2002).

Deposition of Daniel R. Fischel In Re: Computer Associates Class Action Securities Litigation, in the United States District Court, Eastern District of New York, File No. 98-CV-4839 (TPC) (MLO) (March 19 and 20, 2002).

Deposition of Daniel R. Fischel in United States of America v. David Blech, In the United States District Court, Southern District of New York, Case No. S1 97 Cr. 402 (KTD) (February 13, 2002).

Testimony of Daniel R. Fischel Re: In the Matter of Coram Healthcare Corp. and Coram, Inc., Debtors, In the United States Bankruptcy Court for the District of Delaware, Case No. 00-3299 Through 00-3300 (MFW) (December 14, 2001).

Deposition of Daniel R. Fischel in Re: Sunbeam Securities Litigation, In the United States District Court, Southern District of Florida, Miami Division, Case No. 98-8258-CIV – Middlebrooks (December 4, 5 and 6, 2001).

Affidavit of Daniel R. Fischel in Re: Jack M. Webb, Special Deputy Receiver For American Eagle Insurance Company v. Elvis Mason, Mason Best Company, L.P., Don D. Hutson, American Eagle Group, Inc., Marion Phillip Guthrie, Frederick G. Anderson, George F. Cass, Richard

M. Kurz, Patricia S. Pickard, Arthur Andersen & Co., L.L.P., and Towers, Perrin Forester & Crosby, Inc., D/B/A Tillinghast, In the District Court of Travis County, Texas, 201st Judicial District, Cause No. 99-08253 (September 7, 2001).

Declaration of Daniel R. Fischel Re: In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities: Before the Federal Communications Commission, Washington DC, GN Docket No. 00-185, (Declaration with K. Arrow, G. Becker, D. Carlton, R. Gertner, J. Kalt, H. Sider, and Gustavo Bamberger) (July 24, 2001).

Declaration of Daniel R. Fischel in Re: Walter Green, on behalf of himself and all others similarly situated v. Merck-Medco Managed Care, L.L.C., United States District Court, Southern District of New York, Civil Action No. 99 CIV 0847 (CLB) (June 18, 2001).

Testimony of Daniel R. Fischel in Re: Tyson Foods, Inc. and Lasso Acquisition Corporation v. IBP, Inc., Delaware Chancery Court, (May 25, 2001).

Deposition of Daniel R. Fischel in Re: Tyson Foods, Inc. and Lasso Acquisition Corporation v. IBP, Inc., Delaware Chancery Court, (May 10, 2001).

Deposition of Daniel R. Fischel in Re: Myron Weiner, Nicholas Sitnycky, Ronald Anderson and Robert Furman on behalf of themselves and all others similarly situated v. The Quaker Oats Company and William D. Smithburg, United States District Court, Northern District of Illinois, Case No. 98 C 3123, (January 24, 2001).

Deposition of Daniel R. Fischel in Re: Retsky Family Limited Partnership v. Price Waterhouse, LLP, United States District Court, Northern District of Illinois, Eastern Division, No. 97 C 7694, (October 31, 2000).

Joint Affidavit of Daniel R. Fischel and David J. Ross in Re: Floyd D. Wilson, for himself and all others similarly situated v. Massachusetts Mutual Life Insurance Company, in the First Judicial District Court, County of Santa Fe, State of New Mexico, No. D0101 CV-98-02814 (August 4, 2000).

Affidavit of Daniel R. Fischel in Re: T. Rowe Price Recovery Fund, L.P., and Carl Marks Management Co., L.P., individually and derivatively on behalf of Seaman Furniture Co., Inc. v. James Rubin, M.D. Sass Associates, Inc., Resurgence Asset Management, L.L.C., M.D. Sass Corporation Resurgence Partners, L.P., M.D. Sass Corporate Resurgence International, Ltd., Robert Symington, Byron Haney, Alan Rosenberg, Steven H. Halper, and Peter McGeough and Seaman Furniture Co., Inc., In the Court of Chancery of the State of Delaware in and for New Castle County, C.A. No. 18013, (June 7, 2000).

Testimony of Daniel R. Fischel in Re: Bank United of Texas, FSB, et al., v. United States of America, United States Court of Federal Claims, Case Number 95-437C, (October 12 and 14, 1999).

Deposition of Daniel R. Fischel in Re: Bank United of Texas, FSB, et al., v. United States of America, United States Court of Federal Claims, Case Number 95-437C, (September, 26, 1999; July 10, 1999; and June 16, 17, 1999),

Testimony of Daniel R. Fischel in Re: C. Robert Suess, et al., v. The United States, United States Court of Federal Claims, No. 90- 981C (May 17, 1999).

Testimony of Daniel R. Fischel in Re: Lexecon, Inc. v. Milberg Weiss Bershad Specthrie & Lerach, et al. in the United States District Court, Northern District of Illinois Eastern Division, Case No. 92 C 7768 (March 8, 9, 10 and 15, 1999).

Testimony of Daniel R. Fischel in Re: California Federal Bank v. United States, in the United States Court of Federal Claims, Case Number 92-138C, (February 4 and 11, 1999).

Deposition of Daniel R. Fischel in Re: California Federal Bank v. United States, in the United States Court of Federal Claims, Case Number 92-138C, (February 6, 1999; January 27 and 30, 1999).

Deposition of Daniel R. Fischel in Re: C. Robert Suess, et al., v. The United States, United States Court of Federal Claims, No. 90- 981C (October 27 and 28, 1998).

Deposition of Daniel R. Fischel in Re: Connector Service Corporation v. Jeffrey Briggs, United States District Court, Northern District of Illinois, Eastern Division, No. 97-C-7088 (August 28, 1998).

Deposition of Daniel R. Fischel in Re: Statesman Savings Holding Corp., et al. v. United States of America, United States Court of Federal Claims, Case No. 90-773C, (May 4, 1998 and February 12, 1998).

Testimony of Daniel R. Fischel in Re: Glendale Federal Bank FSB v. United States of America, United States Court of Federal Claims, No. 90-772C, (March 24, 25 and 26, 1998; September 2, 3, 4, 5, 8, 9, 10, 11, 12, 24, 25, 26 and 27, 1997; October 7, 9, 16, 17, 30 and 31, 1997; December 8, 9 and 10, 1997).

Affidavit of Daniel R. Fischel and David J. Ross in Re: Publicis Communication v. True North Communications Inc., et al., United States District Court, Northern District of Illinois, Eastern Division, Case No. 97-C-8263, (December 7, 1997).

Deposition of Daniel R. Fischel in Re: Glendale Federal Bank FSB v. United States of America, United States Court of Federal Claims, No. 90-772C, (August 27 and 28, 1997).

Testimony of Daniel R. Fischel in Re: AUSA Life Insurance Company, et al. v. Ernst & Young, in the United States District Court, Southern District of New York, Master File No. 94 CIV. 3116 (CLB) (July 7 and 8, 1997).

Deposition of Daniel R. Fischel in Re: Santa's Best, f/k/a National Rennoc, an Illinois general partnership, and Tinsel/Ruff Group Limited Partnership, an Illinois limited partnership v. Rennoc Limited Partnership, a New Jersey limited partnership, v. Tinsel/Ruff Group Limited Partnership, an Illinois limited partnership, in the Circuit Court of Cook, Illinois County Department - Chancery Division, No. 95 CH 12160, (June 17, 1997).

Arbitration of Daniel R. Fischel in Re: Lerner v. Goldman Sachs, et. al., Before the American Arbitration Association, 75-136-00090-94 (April 10, 1997).

Affidavit of Daniel R. Fischel in Re: Hilton Hotels Corporation and HLT Corporation v. ITT Corporation, United States District Court, District of Nevada, CV-S-97-00095-PMP (RLH) (March 24, 1997).

Deposition of Daniel R. Fischel in Re: Glendale Federal Bank, FSB v. United States of America, Washington, D.C., Case No. 90-772C, (March 19, 1997; January 30 and 31, 1997).

Deposition of Daniel R. Fischel in Re: Statesman Savings Holding Corporation v. United States of America, Washington, D.C., Case No. 90-773-C, (February 19 and 20, 1997).

Testimony of Daniel R. Fischel in Re: Westcap Enterprises, Inc. and Westcap Corporation, Debtor; in the United States Bankruptcy Court, for the Southern District of Texas, Houston Division, Houston, Texas; Case No. 96-43191-H2-11, (November 1996).

Testimony of Daniel R. Fischel in Re: United States of America v. Robert R. Krilich, in the United States District Court, Northern District of Illinois, Eastern Division, No. 94 CR 419, (August 20, 1996 and July 15, 1996)

Deposition of Daniel R. Fischel in Re: McMahan & Company, Frole, Revy Investment Co., Inc. and Wechsler & Krumholz, Inc. v. Wherehouse Entertainment, Inc., Louis A. Kwiker, George A. Smith, Michael T. O'Kane, Lawrence K. Harris, et al., United States District Court, Southern District of New York, Index No. 88 Civ. 0321 (SS) (AJP), (July 16, 1996 and June 10, 1996).

Deposition of Daniel R. Fischel in Re: Joseph W. and Helen B. Teague, Steven Allen Barker, Rita Strahowski, Swanee Beck, and Lifetime Partners of PTL, as representatives of a nationwide class consisting of 150,129 Lifetime Partners and of 27,839 persons who have partially paid for Lifetime Partnerships v. James O. Bakker, in the United States District Court for the Western District of North Carolina, Civil Action No. 3:87CV514, (June 28, 1996).

Deposition of Daniel R. Fischel in Re: Snapple Beverage Corporation Securities Litigation, in the United States District Court, Eastern District of New York, Master File No. CV 94-3647 (May 30, 1996).

Testimony of Daniel R. Fischel in Re: Chuck Quackenbush, Insurance Commissioner of the State of California, in his capacity as Trustee of Mission Insurance Company Trust, et al. v. Borg-Warner Corporation, Borg Warner Equities Corporation, Borg-Warner Insurance Service, Inc., et al., for the Superior Court of the State of California, for the County of Los Angeles, No. C688487 (April 18, 1996).

Deposition of Daniel R. Fischel in Re: Chuck Quackenbush, Insurance commissioner of the State of California, in his capacity as Trustee of Mission Insurance Company Trust, et al. v. Borg-Warner Corporation, Borg Warner Equities Corporation, Borg-Warner Insurance Service, Inc., et al., for the Superior Court of the State of California, for the County of Los Angeles, No. C688487 (April 17, 1996).

Deposition of Daniel R. Fischel in Re: Household Commercial Financial Services, Inc. a citizen of the states of Delaware and Illinois v. Julius Trump, a citizen of the State of Florida, Edmond Trump, a citizen of the state of Florida, James M. Jacobson, a citizen of the State of New York, and Parker, Chapin, Flattau & Klimpl, a citizen of the states of New York and New Jersey, in the United States District Court, for the Northern District of Illinois Eastern Division, 92 C 5010 (February 1, 1996).

Deposition of Daniel R. Fischel in Re: JWP, Inc. Securities Litigation, in the United States District Court, Southern District of New York, Master File No. 92 Civ. 5815 (CLB); AUSA Life Insurance Company, et al. v. Ernst & Young, in the United States District Court, Southern District of New York, Master File No. 94 Civ. 3116 (CLB) (November 30, 1995; November 9, 1995; October 18 and 19, 1995; September 28, 1995).

Deposition of Daniel R. Fischel in Re: City of Houston Municipal Employees Pension System, a Texas association v. PaineWebber Group Inc., et al., in the United States District Court, Eastern District of Missouri, Eastern Division, No. 4:94CV0073CAS (November 15 and 16, 1995).

Testimony of Daniel R. Fischel In Re: American Continental Corporation/Lincoln Savings & Loan Securities Litigation - Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach and Kevin P. Roddy, in the United States District Court, District of Arizona, Civ-93-1087-PHX-JMR (July 25 and 26, 1995).

Deposition of Daniel R. Fischel in Re: Keith C. Bogard, et al., v. National Community Bank Inc., et al., in the United States District Court, District of New Jersey, No. 90-5-32 (HAA) (December 20, 1994).

Deposition of Daniel R. Fischel in Re: Harvey Rosen, Ben Rogers and Julie Rogers v. Deloitte & Touche, Elias Zinn, Julius Zinn, Dennis Lamm, and Ronald Begnaud, in the 268th Judicial District Court, of Fort Bend County, Texas, Cause No. 84-482 (November 9, 1994).

Testimony of Daniel R. Fischel in Re: PPM America, Inc., et al. v. Marriott Corporation et al., in the United States District Court, for the District of Maryland, Civil Docket No. H-92-3068 (October 12, 1994).

Deposition of Daniel R. Fischel in Re: Browning-Ferris Industries, Inc., Securities Litigation, United States District Court, for the Southern District of Texas, Houston Division, Civil Action H-903477 (September 1, 1994).

Testimony of Daniel R. Fischel in Re: Computer Associates International Inc. Securities Litigation, United States District Court, Eastern District of New York, CV-90-2398 (JBW) (May 26 and 27, 1994).

Deposition of Daniel R. Fischel in Re: PPM America, Inc., et al. v. Marriott Corporation et al., United States District, for the District of Maryland, H-92-3068 (May 10, 1994 and March 8, 1994).

Deposition of Daniel R. Fischel in Re: Securities and Exchange Commission v. Shared Medical Systems Corporation, R. James Macaleer, James C. Kelly and Clyde M. Hyde, United States District Court, for the Eastern District of Pennsylvania, Civil Action - Law: No. 91-CV-6549 (February 22, 1994).

Testimony of Daniel R. Fischel in Re: Peter M. Schultz and Pamela A. Schultz v. Rhode Island Hospital Trust National Bank, N.A., et al., United States District Court, District of Massachusetts, Civil Action No. 88-2870-T (February 16, 1994).

Deposition of Daniel R. Fischel in Re: Henry T. Endo, et al. v. John M. Albertine, et al., United States District Court, Northern District of Illinois, Eastern Division, No. 88 C 1815 (November 11 and 12, 1993; October 28, 1993).

Deposition of Daniel R. Fischel in Re: Computer Associates International Inc. Securities Litigation, United States District Court, Eastern District of New York, CV 90-2398 (JBW) (November 2, 1993 and February 4, 1993).

Affidavit of Daniel R. Fischel in Re: Peter M. Schultz and Pamela A. Schultz v. Rhode Island Hospital Trust National Bank, N.A. et al., United States District Court, District of Massachusetts, Civil Action No. SS-2870-T (October 28, 1993).

Deposition of Daniel R. Fischel in Re: Alpheus John Goddard, III, etc. v. Continental Bank N.A., etc., State of Illinois, County of Cook, Circuit Court of Cook County, County Department-Chancery Division, No. 89 CH 1081 (September 10, 1993).

Deposition of Daniel R. Fischel in Re: Taxable Municipal Bond Section "G" Securities Litigation, United States District Court, Eastern District of Louisiana, MDL No. 863 (September 2, 1993).

Reply Affidavit of Daniel R. Fischel in Re: Columbia Securities Litigation, United States District Court Southern District of New York, 89 Civ. 6821 (LBS) (August 30, 1993).

Affidavit of Daniel R. Fischel in Re: Consumers Gas & Oil, Inc. v. Farmland Industries, Inc., et al., United States District Court, for the District of Colorado, Civil Action No. 92-F-1394 (August 26, 1993).

Declaration of Daniel R. Fischel in Re: Equitec Rollup Litigation, United States District Court for the Northern District of California, Master file No. C90 2064 CAL (July 28, 1993).

Deposition of Daniel R. Fischel in Re: United Telecommunications, Inc. Securities Litigation, United States District Court for the District of Kansas, No. 90-2251-0 (July 22, 1993, April 21 and 22, 1993).

Deposition of Daniel R. Fischel in Re: Consumers Gas & Oil, Inc., a Colorado farm cooperative in liquidation, on behalf of itself and others similarly situated v. Farmland Industries, Inc., a Kansas farm cooperative, et al., United States District Court, District of Colorado, 92-F-1394 (June 18, 1993).

Deposition of Daniel R. Fischel in Re: Rosalind Wells v. HBO & Company, United States District Court, Northern District of Georgia, Atlanta Division, 8-87-CV-657A (JTC) (June 10, 1993 and May 24, 1993).

Deposition of Daniel R. Fischel in Re: Equitec Rollup Litigation, United States District Court, Northern District of California, No. C-90-2064 CAL (June 2 and 3, 1993).

Supplemental Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90 0931 VRW (May 20, 1993).

Affidavit of Daniel R. Fischel and Kenneth R. Cone in Re: Raymond P. Hayden, et al. v. Jeffrey L. Feldman, et al., United States District Court, Southern District of New York No. 88 Civ. 8048 (JES) (May 12, 1993).

Testimony of Daniel R. Fischel in Re: Melridge, Inc., Securities Litigation, United States District Court for the District of Oregon, CV No. 87-1426-FR (May 4 and 5, 1993).

Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90 0931 VRW (April 20, 1993).

Deposition of Daniel R. Fischel in Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, No. 88-1858-K (April 1, 1993).

Affidavit of Daniel R. Fischel in Re: Columbia Securities Litigation, United States District Court, Southern District of New York, 89 Civ. 6821 (LBS) (March 25, 1993).

Deposition of Daniel R. Fischel in Re: Westinghouse Securities Litigation, United States District Court, Western District of Pennsylvania, CV No. 91 354 (March 23, 1993).

Declaration of Daniel R. Fischel in Re: Oracle Securities Litigation, United States District Court, Northern District of California, Master File No. C 90-0931 VRW (March 22, 1993).

Deposition of Daniel R. Fischel in Re: Kroy, Inc., a Minnesota corporation et al. v. Bankers Trust New York Corporation, et al., Superior Court of the State of Arizona in and for the County of Maricopa, No. CV 89-35680 (March 18, 1993).

Deposition of Daniel R. Fischel in Re: Amos M. Ames, Helen M. Ames, Robert F. Bourke, Louise L. Bourke, Leo E. Corr, April C. Corr, Wence M. Horak, Ruth Horak, Robert T. Freas, Maurita Freas, Bruce Fink, Jr., William H. Jones, Candace A. Jones, Richard Paul, William L. Paul, Carole Paul, Steven J. Paul, Best Power Technology, Incorporated, and Best Power Technology Sales Corporation, in the State of Wisconsin, Circuit Court, Juneau County, Consolidated Case Nos. 92-CV-31, 92-CV-32 (January 26, 1993).

Deposition of Daniel R. Fischel in Re: Federal Express Corporation Shareholder Litigation, in the United States District Court, Western District of Tennessee, Master File No. 90-2359-4B (December 3, 1992).

Deposition of Daniel R. Fischel in Re: Raymond Snyder, Individually and on behalf of all those similarly situated v. Oneok, Inc., et al., in the United States District Court, Northern District of Oklahoma, Civil Action No. 88 C 1500 E (October 15 and 16, 1992).

Deposition of Daniel R. Fischel in Re: Melridge, Inc. Securities Litigation, Consolidated Actions, United States District Court, District of Oregon, Master File No. CV87-1426-JU and Nos. 387-06589-P11, 88-05-JU, 88-221-JU, 88-0699-PA, 88-1266-JU (September 17, 1992; July 25 and 26, 1991).

Deposition of Daniel R. Fischel in Re: Maxus Corporate Company v. Kidder, Peabody & Co. Incorporated, Martin A. Siegel and Ivan F. Boesky, in the District Court Dallas County, Texas, 298th Judicial District, No. 87-15583-M (September 11, 1992; August 18 and 19, 1992).

Deposition of Daniel R. Fischel in Re: Jennifer A. Florin and Alan L. Mundt, on behalf of themselves and all others similarly situated v. Wesray Capital Corp., Citizens and Southern Trust Company, a subsidiary of Citizens and Southern Corporation, Robert K. Barton, Leonard S. Gaby, Allen G. Lacoe, Robert A. Magnusson, Anthony A. Saliture, Harlan B. Smith, Thomas F. Stutzman, Raymond G. Chambers, Frank E. Richardson, E. Burke Ross, Jr., William E. Simon and Frank W. Walsh, Jr., in the United States District Court, Western District of Wisconsin, Civil Action No. 91C-0948 (August 12, 1992).

Deposition of Daniel R. Fischel in Re: Pearl Newman, Shanna Lehmann & Athanasios Tsivelekidis, on their own behalf and on behalf of all other persons similarly situated v. On-Line Software International, Inc. Jack M. Berdy, John C. Crocker, Richard A. Granger, Richard R. Holtmeier, Michael S. Juceam, Edward J. Siegel, Howard P. Sorgen and Richard Ward, United States District Court, District of New Jersey, Consolidated Civil Action Nos. 88-3247, 88-3411 (July 28 and 29, 1992).

Deposition of Daniel R. Fischel in Re: Crazy Eddie Securities Litigation, Oppenheimer-Palmieri Fund, I.P., et al. v. Peat Marwick Main & Co., et al., United States District Court for the Eastern District of New York, 87 Civ. 0033 (EHN), 88 Civ. 3481 (EHN) (June 11, 1992; March 26 and 27, 1992).

Testimony of Daniel R. Fischel in Re: American Continental Corporation/Lincoln Savings and Loan Securities Litigation, in the United States District Court, for the District of Arizona MDL Docket No. 834 (June 4, 1992; May 26, 27 and 28, 1992).

Testimony of Daniel R. Fischel in Re: State of West Virginia v. Morgan Stanley & Co. Incorporated, in the Circuit Court of Kanawha County, State of West Virginia, Civil Action No. 89-C-3700 (April 27, 1992).

Affidavit of Daniel R. Fischel in Re: William Steiner, on behalf of himself and all others similarly situated v. Tektronix, Inc., et al., in the United States District Court, District Court of Oregon, Civil No. 90-587-JO (March 23, 1992).

Deposition of Daniel R. Fischel in Re: Martin Kaplan and Selma Kaplan, on Behalf of Themselves and All Others Similarly Situated v. VICORP Restaurants, Inc., Charles R. Frederickson, Robert S. Benson, Emerson B. Kendall, Robert T. Marto and Johyn C. Hoyt, United States District Court, District of Colorado, Civil Action No. 90-C-2182 (February 11, 1992).

Deposition of Daniel R. Fischel in Re: Interco Incorporated v. Wasserstein, Perella & Co., Inc., United States District Court, Eastern District of Missouri, Eastern Division, No. 91-0151-C-6 (February 3, 1992 and December 12, 1991).

Statement of Daniel R. Fischel in Re: Far West Federal Bank, S.B., et al. v. Director, Office of Thrift Supervision, et al., United States District Court for the District of Oregon, Civil Action No. 90-103 PA (February 3, 1992).

Deposition of Daniel R. Fischel in Re: Capital Bank of California v. Morgan Stanley & Co., Incorporated, United States District Court, Central District of California, No. 91-1650-R (January 24, 1992).

Deposition of Daniel R. Fischel in Re: Trinity Ventures, et al. v. Federal Deposit Insurance Corporation, in its own capacity and as successor to the Federal Savings and Loan Insurance Corporation, United States District Court, for the District of Oregon, No. 90-103-PA (January 6, 1992).

Deposition of Daniel R. Fischel in Re: First Republicbank Securities Litigation, United States District Court, Northern District of Texas, Dallas Division, Civil Action No. 3-88-0641-H (January 2, and 3, 1992; November 26, 1991).

Deposition of Daniel R. Fischel in Re: State of West Virginia v. Morgan Stanley & Co. Incorporated; Salomon Brothers Inc.; and Goldman Sachs & Co., in the Circuit Court of Kanawha County, State of West Virginia, Civil Action No. 89-C-3700 (December 19 and 20, 1991).

Deposition of Daniel R. Fischel in Re: The Regina Company, Inc. Securities Litigation, United States District Court, District of New Jersey, Civil Action No. 88-4149 (HAA) (October 31, 1991).

Affidavit of Daniel R. Fischel in Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, Civil Action No. 88-1858-K (October 7 1991).

Deposition of Daniel R. Fischel in Re: Capital Maritime Corporation v. Amfels, Inc., Far East Livingston Shipbuilding Ltd., John B. Allison and Patrick A. McDermid, United States District Court for the Southern District of Texas Houston Division, C.A. No. H-90-3417 (September 12, 1991).

Deposition of Daniel R. Fischel in Re: Thomas J. Caldarone, Jr. v. Isidore Brown, et al., and John E. Washburn, et al. v. Isidore Brown, et al., United States District Court, Northern District of Illinois, Eastern Division, Docket Nos. 80 C 6251 and 81 C 1475 (August 28, 29, and 30, 1991).

Testimony of Daniel R. Fischel in Re: Apple Securities Litigation, United States District Court, Northern District of California, Northern Division, Docket No. C-84-20148 (May 20 and 21, 1991).

Testimony of Daniel R. Fischel in Re: The Stuart-James Co., Inc., et al. Litigation, United States of America before the Securities & Exchange Commission, in Denver, Colorado, Administrative Proceeding File No. 3-7164 (May 6, 1991).

Deposition of Daniel R. Fischel in Re: Jennie Farber on behalf of herself and all others similarly situated v. Public Service Company of New Mexico; Jerry D. Geist; John P. Bundrant and Albert J. Robison, United States District Court for the District of New Mexico, CIV 89-456 JB WWD (April 17 and 18, 1991).

Affidavit of Daniel R. Fischel in Re: Moise Katz, Frederick Rand, Elias Weissman, Richard D. Morgan, Marion R. Morgan and Mortimer Schulman v. Raymond A. Hay, United States District Court, Southern District of New York, No. 86 Civ. 5640 (JES) (March 29, 1991).

Deposition of Daniel R. Fischel in Re: Standard Chartered PLC., a United Kingdom corporation, et al. v. Price Waterhouse, a general partnership, Superior Court of the State of Arizona, in and for the County of Maricopa, CV 88-34414 (March 13 and 14, 1991).

Affidavit of Daniel R. Fischel in Re: United States of America v. AVX Corporation, and Commonwealth of Massachusetts v. AVX Corporation, United States District Court, District of Massachusetts, Civil Action Nos. 83-3882-Y and 83-3899-Y (January 29, 1991).

Deposition of Daniel R. Fischel in Re: Apple Computer Securities, United States District Court Northern District of California, San Jose Division, No. C-84-20148 (a) JW (December 13 and 14, 1990).

Deposition of Daniel R. Fischel in Re: Polycast Technology Corporation, and Uniroyal Plastics Acquisition Corp. v. Uniroyal, Inc., et al., United States District Court Southern District of New York, No. 87 Civ. 3297 (December 6, 1990 and November 28, 1990).

Deposition of Daniel R. Fischel in Re: Ellen Rudd, on behalf of herself and all others similarly situated, and Mayer Corporation on behalf of themselves, and all others similarly situated, and Louis Brandt, and Israel Baker, Jay R. Kuhne, Pininfarina Corp., and American Transfer Co., on behalf of themselves and all others similarly situated v. Kirk Kerkorian, et al., Superior Court of the State of California, County of Los Angeles, Nos. CA 000980, CA 000981, CA 001017, CA 620279 (June 21, 1990).

Testimony of Daniel R. Fischel in Re: City of San Jose v. Paine, Webber, Jackson & Curtis, Incorporated, et al., and related counter- and Third-Party Claims, United States District Court, Northern District, No. C-84-20601 RPA (May 23 and 24, 1990).

Deposition of Daniel R. Fischel in Re: City of San Jose v. Paine, Webber, Jackson & Curtis, Incorporated, et al., and related counter- and Third-Party Claims, United States District Court, Northern District, No. C-84-20601 RPA (May 22, 1990), No. RPA 84-20601 (November 16, 1989 and September 8, 1989).

Testimony of Daniel R. Fischel in Re: Kulicke and Soffa Industries, Inc. Securities Litigation, United States District Court for the Eastern District of Pennsylvania, No. 86-1656 (March 20 and 21, 1990).

Deposition of Daniel R. Fischel in Re: Kulicke and Soffa Industries, Inc. Securities Litigation, United States District Court for the Eastern District of Pennsylvania, No. 86-1656 (March 9, 1990; December 19 and 21, 1989).

Affidavit of Daniel R. Fischel in Re: Viacom International Inc. v. Carl C. Icahn, et al., v. Ralph M. Baruch, et al., United States District Court, Southern District of New York, No. 86 Civ. 4215 (RPP) (March 8, 1990).

Deposition of Daniel R. Fischel in Re: Technical Equities Coordination Litigation, Superior Court of the State of California for the County of Santa Clara, Master File No. 1991, Santa Clara County Superior No. 600306 (March 1, 1990).

Deposition of Daniel R. Fischel in Re: Amalgamated Clothing and Textile Workers Union, AFL-CIO, et al. v. David A. Murdock, et al., United States District court for the Central District of California, No. CV-86-6410 IH (February 8, 1990).

Deposition of Daniel R. Fischel in Re: Connecticut National Life Insurance Company, et al. v. Peter A. Sprecher and Laventhol & Horwath, United States District Court, Central District of California, No. CV 87-1945 WJR (Tx) (January 30, 1990).

Deposition of Daniel R. Fischel in Re: Consolidated Capital Securities Litigation, United States District Court, Northern District of California, No. C-85-7332 AJZ (January 22, 1990).

Declaration of Daniel R. Fischel in Re Plaintiffs' Damages in Re: Liquidity Fund, et al. v. Southmark Corporation, et al. in the Superior Court of the State of California for the County of San Mateo, No. 332435 (January 18, 1990).

Deposition of Daniel R. Fischel in Re: Norman Kamerman, Shirley Brown, Edward Rosen, Lexim Investors Corp., and Dohsa Anstalt, on behalf of themselves and all others similarly situated, and Barnett Stepak v. Saul Steinberg, Reliance Group Holdings, Inc., Reliance Group, Inc., Reliance Financial Services corp., and Reliance Insurance Company, United States District Court, Southern District of New York, No. 84 Civ. 4440 (September 13, 1989).

Affidavit of Daniel R. Fischel in Re: Edward A. Taylor, et al. v. A. O. Smith Corporation et al., Circuit Court for Lincoln County, Tennessee, No. 098-84 (August 11, 1989).

Deposition of Daniel R. Fischel in Re: Container Products Inc. v. Pace Industries, United States District Court, Southern District of New York, No. 88-CIV. 3549 (KMW) (July 19, 1989).

Deposition of Daniel R. Fischel in Re: Joseph B. Moorman, et al. v. Southmark Corporation, et al., Liquidity Fund, et al. v. Southmark Corporation, et al., Superior Court of the State of California for the County of San Mateo, Nos. 322135 and 332435 (July 11, 1989).

Testimony of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, and Meritor Financial Group, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8471 (June 20, 1989).

Deposition of Daniel R. Fischel in Re: Richard J. Heckmann, et al. v. C. L. Ahmanson, et al., and Consolidated Cases, Superior Court of the State of California for the County of Los Angeles, Nos. CA000851 and C642081 (June 8, 1989).

Deposition of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (May 11, 1989).

Testimony of Daniel R. Fischel in Re: Tessie Wolfson, et al. v. Frederick S. Hammer, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8472 (April 13, 1989).

Deposition of Daniel R. Fischel in Re: National Union Fire Insurance Company of Pittsburgh, PA v. Wells Fargo Bank, N.A., District Court of Harris County, Texas, 125th Judicial District, No. 88-49246 (April 10 and 11, 1989).

Deposition of Daniel R. Fischel in Re: Susan Rothenberg, as Custodian for Stephen J. Rothenberg v. Charles E. Hurwitz, United Financial Corporation, United Savings Association of Texas, et al., United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-86-1435 (March 30, 1989).

Deposition of Daniel R. Fischel in Re: Jose Nodar, et al. v. William Weksel, Albert Bromberg, Henry B. Turner, IV, Frank L. Bryant, Leo Kuperschmid, Bennett S. Lebow, Ernst & Whinney and Oppenheimer & Co., Inc., United States District Court, Southern District of

New York, No. 84 Civ. 3870 (VLB) and consolidation case No. 84 Civ. 5132 (VLB) (December 15 and 16, 1988).

Deposition of Daniel R. Fischel in Re: William Steiner, et al. v. Whittaker Corporation, et al., Superior Court of the State of California for the County of Los Angeles, No. CA000817 (December 7, 1988).

Deposition of Daniel R. Fischel in Re: Arnold I. Laven, et al. v. Western Union Corporation, et al., United States District Court for the District, Western District of Washington, MDL No. 551 (August 30 and 31, 1988).

Deposition of Daniel R. Fischel in Re: Washington Public Power Supply System Securities Litigation, United States District Court, Western District of Washington, MDL No. 551 (August 16 and 22, 1988).

Affidavit of Daniel R. Fischel in Re: District Business Conduct Committee for District No. 3 v. Blinder, Robinson & Company Inc., et al., National Association of Securities Dealers, Inc. National Business Conduct Committee, Complaint No. DEN-666 (July 21, 1988).

Deposition of Daniel R. Fischel in Re: Joseph Seidman, et al. v. Stauffer Chemical Company, et al., United States District Court for the District of Connecticut, No. B 84-543 (TFGD) (June 10, 1988 and May 5, 1987).

Deposition of Daniel R. Fischel in Re: Edlin Cattle Co., Inc., and James Edlin v. A. O. Smith Harvestore Products, Inc., et al., United States District Court for the Northern District of Texas, Amarillo Division, No. CA-2-86-0122 (May 12, 1988).

Deposition of Daniel R. Fischel in Re: MicroPro Securities Litigation, United States District Court for the Northern District of California, No. C-85-7428-EFL (A) (May 2, 1988).

Affidavit of Daniel R. Fischel in Re: Pizza Time Theatre Securities Litigation, United States District Court for the Northern District of California, Civil File No. 84-20048-(A)-RPA (March 25, 1988).

Affidavit of Daniel R. Fischel and Robert A. Sherwin in Re: First National Bank of Louisville v. Brooks Farms, and George C. Brooks, et al., Third-Party Plaintiffs v. A. O. Smith Corporation, et al., Circuit Court for Maury County, Tennessee, No. 2058 (March 3, 1988).

Testimony of Daniel R. Fischel in Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (March 15, 16, 17, and 18, 1988).

Deposition of Daniel R. Fischel in Re: Nucorp Energy Securities Litigation, United States District Court for the Southern District of California, M.D.L. 514 (January 27, 1988).

Deposition of Daniel R. Fischel in Re: Anheuser-Busch Companies, Inc. v. W. Paul Thayer, et al., United States District Court for the Northern District of Texas, Dallas Division, No. CA-3-85-0794-R (January 21, 1988; December 4, 1987; and November 5, 1987).

Testimony of Daniel R. Fischel in Re: Securities and Exchange Commission v. First City Finance Corporation Ltd., and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 18, 1987).

Testimony of Daniel R. Fischel in Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan Circuit Court for the county of Oakland, Civil Action No. 8327011-CZ (December 14, 15, and 16, 1987).

Deposition of Daniel R. Fischel in Re: Securities and Exchange Commission v. First City Finance Corporation, Ltd. and Marc Belzberg, United States District Court for the District of Columbia, Civil Action No. 86-2240 (December 11, 1987).

Affidavit of Daniel R. Fischel in Re: Gerald D. Broder and Constance D. Broder v. Alphonse H. Bellac and William B. Weinberger v. Combustion Equipment Associates, Inc., et al., and William B. Weinberger v. Coopers & Lybrand, United States District Court for the Southern District of New York, 80 CIV 6175 (CES) 80 CIV 6839 (CES) 84 CIV 8217 (CES) (July 22, 1987).

Deposition of Daniel R. Fischel in Re: The Irvine Company v. Athalie Irvine Smith and Athalie R. Clarke, Trustee, State of Michigan, Circuit Court for the County of Oakland, Civil Action No. 83270011-CZ (June 1, 1987).

Deposition of Daniel R. Fischel in Re: Fortune Systems Securities Litigation, United States District for the Northern District of California, Master File No. 83-3348A-WHO (May 7, 1987).

Deposition of Daniel R. Fischel in Re: Victor Technologies Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-3906(A)-RFP (FW) (January 8, 1987 and October 30, 1986).

Reply Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 27, 1986).

Testimony of Daniel R. Fischel in Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P., et al., United States District Court for the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Supplemental Affidavit of Daniel R. Fischel in Re: NVHomes, L.P. v. Ryan Homes, Inc.; and Ryan Homes, Inc. v. NVHomes, L.P. and NVAcquisition L.P., et al., United States District Court the Western District of Pennsylvania, Civil Action No. 86-2139 (October 24, 1986).

Affidavit of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-86-2139 (October 20, 1986).

Declaration of Daniel R. Fischel in Support of the Motion by the Activision Defendants for Summary Judgment in Re: Activision Securities Litigation, United States District Court for the Northern District of California, Master File No. C-83-4639(A)-MHP (October 2, 1986).

Affidavit in Support of Defendants Motion for Summary Judgment in Re: MCorp Securities Litigation, United States Court for the Southern District of Texas, Civil Action No. H-85-5894 (September 25, 1986).

Deposition of Daniel R. Fischel in Re: Activision Securities Litigation, United States District Court for the Northern District of California, No. C 83 4639 (August 18 and 19, 1986).

Deposition of Daniel R. Fischel in Re: John Mancino v. James A. McMaughan, et al., United States District Court for the Northern District of California, Civil No. C-84-0407-TEH (August 14, 1986).

Testimony of Daniel R. Fischel in Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (August 1, 1986).

Reply Affidavit of Daniel R. Fischel in Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 28, 1986).

Affidavit of Daniel R. Fischel in Re: The Amalgamated Sugar Company v. NL Industries, United States District Court for the Southern District of New York, 86 Civ. 5010 (VLB) (July 18, 1986).

Deposition of Daniel R. Fischel in Re: Charles W. Leigh, et al. and George Johnson, et al. v. Clyde William Engle, et al., United States District Court for the Northern District of Illinois, Eastern Division, Case No. 78 C 3799 (July 1, 1986).

Deposition of Daniel R. Fischel in Re: Seafirst Corporation v. William M. Jenkins, et al.; and Seafirst Corporation v. John R. Boyd, et al., United States District Court for the Western District of Washington at Seattle, Case No. C83-771R (February 27, 1986).

Deposition of Daniel R. Fischel in Re: Kreindler v. Sambo's Restaurants, Inc., United States District Court for the Southern District of New York, Case No. 79 Civ. 4538 (December 17, 1985).

Affidavit of Daniel R. Fischel in Re: United States of America v. S. Richmond Dole and Clark J. Matthews II (March 19, 1985).

Deposition of Daniel R. Fischel in Re: Craig T. McFarland, et al. v. Memorex Corporation, United States District Court for the Northern District of California, No. C 79-2926-WAI, C 79-2007-WAI, C 79-241-WAI (February 26, 1985; January 29 and 30, 1985).

Testimony of Daniel R. Fischel in Re: Robert J. Lawrence v. Grumman Corp. Pension Plan, et al., United States District Court for the Eastern District of New York, No. CV-81-3530 (December 19, 1983).

Testimony of Daniel R. Fishel in Re: Telvest, Inc. v. Junie L. Bradshaw, et al. and American Furniture Company, United States District Court, for the Eastern District of Virginia Richmond Division, No. CA-79-0722-R (December 4, 1981).

OTHER ACTIVITIES

Member, American Economic Association, American Finance Association.

Member of the Board of Overseers of the Becker-Friedman Institute at the University of Chicago.

Former Advisor to the Harvard Program on Corporate Governance at Harvard University.

Former Member, Board of Directors, Center for the Study of the Economy and the State.

Former Member, Mid-America Institute Task Force on Stock Market Collapse.

Have acted as a consultant and/or advisor to the New York Stock Exchange, the National Association of Securities Dealers, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the Federal Trade Commission, the Department of Labor, the Securities and Exchange Commission, the Canadian Securities and Exchange Commission, the United States Department of Justice, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Office of Thrift Supervision.

Referee, Journal of Financial Economics, Journal of Law and Economics, Journal of Legal Studies.

Participant and speaker at multiple conferences on the Economics of Corporate, Securities and Commodities Law and the Regulation of Financial Markets.

Former Chairman, American Association of Law Schools' Section on Law and Economics.

Appendix B

Materials Relied Upon

Court Document

Third Amended Complaint, April 17, 2017

Expert Report

Report on Market Efficiency of Steven P. Feinstein, Ph.D., CFA dated December 8, 2017

Deposition

Transcript of Videotaped Deposition of Steven P. Feinstein, Ph.D, CFA, February 9, 2018

Bates Stamped Documents

EPL-0003291-98

EPL-0004469-75

FEINSTEIN 0002854.xlsx

SEC Filings

Form 4 filed by Stephen J. Sather, May 21, 2015

Form 4 filed by Edward J. Valle, May 21, 2015

Form 4 filed by Trimaran Pollo, May 21, 2015

Amended Form 4 filed by Trimaran Pollo, May 22, 2015

News Articles

Reuters, “BUZZ-El Pollo Loco Holdings Inc: Hit again on existing holder sale,” May 20, 2015

Investor’s Business Daily, “Shake Shack Hits New High Amid NYC Flagship Reopening,” May 20, 2015

Data

CRSP US Stock and Index Databases ©2017 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business.

Bloomberg, L.P.